SUPREME COURT OF THE UNITED STATES.

No. 128.

JOSEPH WISWALL, PLAINTIFF IN ERROR,

VS.

DAVID SAMPSON, LESSEE OF EDWARD HALL AND EDWARD S. DARGAN.

IN ERROR TO THE CIRCUIT COURT, U. S., SOUTHERN DIST. OF ALABAMA.

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Gideon, Printer.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-eight—the honorable William Crawford, judge of said court, presiding.

Be it remembered, that heretofore, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and forty-eight, David Sampson, ex demise, &c., filed in said court his declaration in ejectment against Abednego Daniels, &c., F. W. McCoy, and William Johnson, tenants, etc., in the words and figures following, to wit:

UNITED STATES OF AMERICA.

Circuit court of the United States, southern district of Alabama, December term, 1847.

David Sampson, by attorney, complains of Abednego Daniel, in custody, &c., wherefore he entered upon that parcel of land situate, lying, and being in the city of Mobile, in the district aforesaid, bounded south by St. Francis street, and lying between Water and Commerce and Planters' streets of the said city, having a front of thirty-five feet on St. Francis street, and extending to Planters' street, with the same breadth; bounded east by lands formerly belonging to M. D. Eslava, and west by a lot of Beach, Ela & Co., and with force and arms ejected and expelled him from the same.

For that the said plaintiff, who is a citizen of the State of Ohio, heretofore, to wit, on the fifteenth day of August, A. D. 1845, was in the possession of the said lands under and by virtue of a demise from Edward Hall, who is a citizen of the State of Maryland, for the term of fifty years, commencing on the day and year aforesaid, and from thence to have and to hold the same for the full term aforesaid. And the said plaintiff being so in possession as aforesaid for the term aforesaid, the said defendant, who is a citizen of the State of Alabama, then and there entered upon the said lands of the said plaintiff, of which he was so possessed as aforesaid, and ejected and expelled the said plaintiff therefrom, and has detained the same from thence hitherto.

And for that whereas the said plaintiff, on the first day of April, 1848, at the district aforesaid, was possessed of the said parcel of lands for the term of fifty years, under a demise from the said Edward Hall for the term aforesaid, and being so in possession, the said defendant, then and there, with force and arms, entered upon the said lands and ejected and expelled the said plaintiff therefrom, to his great wrong and injury, and against the peace and dignity of the State of Alabama.

And for that whereas the said plaintiff, on the twentieth day of August, A. D. 1845, was in the possession of the said lands under and by virtue of a demise from Edward S. Daigan for the term of fifty years, to commence on the day and year aforesaid, and to continue from thence for the full end and term aforesaid. And the said plaintiff being in possession of the lands aforesaid, at the district aforesaid, the said defendant, then and there, with force and arms, entered upon the said lands and ejected and expelled the said plaintiff therefrom, against the peace and dignity of the State of Alabama.

CAMPBELL & CHANDLER,
Plaintiff's attorneys.

MOBILE, *April 3d*, 1848.

GENTLEMEN: I understand you have some claim or are interested in the parcel of land in the city of Mobile, lying north of St. Francis street, of that city, and measuring thereon thirty-five feet, and extending to Planters' street with that width, bounded on the east by premises formerly belonging to M. D. Eslava, and on the west by premises of Beach, Ela & Co., in the square between St. Francis, Commerce, Water, and Planters' streets, and that you are in possession of these lands. I am sued in the circuit court of the United States, for the southern district of Alabama, concerning them. I am but a casual ejector without claim of title. I therefore respectfully request you to take my place in said cause, at the next term of the circuit court of the United States for the district aforesaid, to be held the 2d Monday of April instant; if you neglect it, you will be turned out of possession.

ABEDNEGO DANIEL.

To FRANKLIN W. MCCOY and
W. J. JOHNSON,
Who are citizens of the State of Alabama.

Received 5th April, 1848, and executed on F. W. McCoy and W. J. Johnson same day.

J. G. LYON, *U. S. M.*
By GEORGE BANCROFT, *D. M.*

And afterwards, on the 28th day of December, A. D. 1848, being a day of a term of said court, begun and held in and for said district, on the fourth Monday of December, A. D. 1848, the following proceedings were had, to wit:

This day came the plaintiff, by his attorney, and moves for judgment against the casual ejector; and it appears to the court that the tenants in possession were served with the declaration, and that they have failed to appear. It is considered by the court, that the said Sampson recover of said casual ejector his said terms yet to come in the tenements aforesaid, and that a writ of habere facias possessionem be awarded to the plaintiff to put him in possession thereof. And thereupon comes Joseph Wiswall, by his attorney, and as landlord moves the court for leave to appear and defend this action in lieu of his said tenants, who have failed to appear, and for leave to demur to the third count in the plaintiff's declaration, if he sees fit; and he agrees upon the trial to confess lease, entry, and ouster, and to plead the general issue to the first and second counts of said declaration; and it appearing to the satisfaction of the court that the said Wiswall is the landlord of the said tenants, McCoy and Johnson, and was such at the service of said declaration, it is ordered by the court that he be admitted to defend said action in lieu of said tenants, who have failed to appear, and that he have leave to demur to the third count of the plaintiff's declaration; and it is further ordered, that the writ of possession above awarded be suspended till the trial of this cause.

And afterwards, to wit, at the December term, 1848, aforesaid, of the said circuit court, the following plea and demurrer was filed herein, to wit:

DAVID SAMPSON, on the several dem. of Edward
Hall and Edward S. Dargan,
vs.
A. DANIEL, McCOY and JOHNSON, tenants.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama, December term, 1848.

And the said Joseph Wiswall, who is admitted by the court to defend in place of the said tenants, by his attorney, comes and defends the force and injury, when, &c., and as to the first and second counts of said declaration, says he is not guilty of the supposed trespasses and ejectments therein laid to his charge, or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof severally complained against him; and of this he puts himself upon the country, &c.

And as to the third count of said declaration the said defendant says, it is not sufficient in law. And he shows to the court here the following causes of demurrer to said third count of said declaration, that is to say, that it is not alleged in said third count that said lessor, Edward S. Dargan, is a citizen of any State of the United States other than the State of Alabama, or of any State whatever, or that he is an alien; and also, that said third count is in other respects uncertain, informal, and insufficient, &c.; wherefore, &c.

K. B. SEWALL, *Att'y for Wiswall.*

And afterwards, to wit, at the said December term, 1848, of said circuit court, the aforesaid demurrer being overruled by the court, the following plea was filed, to wit:

Plea.

DAVID SAMPSON, on dem. Hall & Dargan,
vs.
A. DANIELS, McCoy & Johnson, tenants.

Circuit court, U. S., southern district of Alabama, Dec'r term, 4th day of January, 1849.

And the said Wiswall, by his attorney, comes and defends, &c.; and as to the third count of said declaration, by leave of the court, says he is not guilty of said supposed trespass and ejectment therein laid to his charge, in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c. K. B. SEWALL,

Att'y for Wiswall.

And afterwards, to wit, at the term of the court aforesaid, begun and held in and for said district, at Mobile, on the fourth Monday of December, A. D. 1848, to wit, on the 4th day of January, A. D. 1848, the following proceedings were had, to wit:

This day came the parties, by their attorneys, and the demurrer of the defendant to the third count of the plaintiff's declaration having been heard, and mature deliberation being thereon had, the same is overruled; and thereupon leave was given to the defendant to plead the general issue to the whole declaration, which was done; and thereupon came a jury, to wit, William H. Redwood, and eleven others, good and lawful men, who being elected, tried, and sworn to try the issues joined between the parties, on their oaths do say, we find the defendant guilty in manner and form as the plaintiff hath declared against him. It is therefore considered by the court, that the plaintiff recover of the defendant one cent damages, and the balance of his unexpired terms in the declaration mentioned, and his costs of suit. And it is further ordered by the court, that the stay heretofore granted upon the issual of the writ of habere facias possession be removed. It is further ordered by the court, that a writ of habere facias possessionem be issued, returnable according to law, for the delivery to the plaintiff of his terms in that parcel of land in the declaration mentioned, bounded north by Planters' street, south by St. Francis street, and lying between Water and Commerce streets, having a front of thirty-five feet on St. Francis street, and extending through from street to street aforesaid; bounded east by lands formerly belonging to M. D. Eslava, and west by lands of Beach, Ela & Co.

Memorandum.

On the trial of this cause the defendant's counsel tendered a bill of exceptions, which was received, signed, and sealed by the court, and ordered to be made a part of the record in this cause; which bill of exceptions is as follows, to wit:

DAVID SAMPSON, on the several dem. of
Edward Hall and Edward S. Dargan,
vs.
ABEDNEGO DANIELS, McCoy and Johnson, tenants of Joseph Wiswall.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

Be it remembered, that on the trial of this cause on this 4th day of

January, 1849, before the honorable William Crawford, judge, the plaintiffs, to show title in their lessors, offered in evidence a judgment rendered in this court on the 28th December, 1840, in favor of C. S. Fowler & Co., against John Ticknor, for 4,991, besides costs; also a judgment rendered in this court, on the 31st December, 1840, in favor of Crouch and Sneed against John Ticknor, $7,176 25 and costs; upon each of which judgments fi. fas. were issued within a year and returned by the marshal—no property found; no other executions or process issued upon either of these judgments except the following: upon the judgment of Crouch & Sneed an alias fi. fa. was issued on the 24th February, 1845, and levied on the property sued for, upon which the marshal returned levied—and "the sale of the property levied on postponed by Judge E. S. Dargan, until further order." And on the 17th May, 1845, a pluries fi. fa. issued on this judgment and was levied on the same property. Upon the judgment of C. S. Fowler & Co., an alias fi. fa. was issued on the 7th April, 1845, and levied on the same property, and returned for want of time to sell; and on the first day of May, 1845, a venditioni exponas issued, upon which and the execution on the Crouch & Sneed judgments, issued the 17th May, the property was sold by the marshal on the 7th July, 1845, to Edward S. Dargan, for $7500; and a deed was made by the marshal to said Dargan, bearing date the thirteenth of August, 1845. The plaintiff further offered in evidence a deed of release and quit claim of the same premises, from Edward S. Dargan to Edward Hall, one of the lessors, bearing date the 3d of April, 1848, a copy of which is hereto attached, marked X; to the reading of which the defendant, by his attorney, objected on the ground that it was neither acknowledged nor recorded; but the objection was overruled by the court, and the deed admitted in evidence upon the proof of the handwriting of Dargan, and the defendant excepted. The plaintiff further offered evidence to show that John Ticknor was in possession of the property sued for from 1838 or 1839 claiming title, and that he remained in possession until about 1845; but whether, after 1840, Ticknor claimed it as his own, or held possession as the tenant of some one else, witness did not know. It further appeared that Ticknor built the store; that in 1839 or 1840 he became embarrassed, and that he owed a large sum of money to one James L. Day, and from some time in 1840 carried on business in the store as the agent of said Day. Day was often there and had the control, but Ticknor managed all the details. It was further proved that McCoy & Johnson, the tenants served with the declaration, were in possession of the premises in April, 1848, and had been in possession since November, 1847.

The defendant then offered in evidence a judgment obtained in the circuit court of Mobile county, on the fourteenth day of June, 1842, in favor of Joseph Wiswall against John Ticknor, for the sum of $2,233 17, besides costs; and a fi. fa. issued thereon the 1st July, 1842, returnable to the fall term of said court, which was returned by the sheriff—no property found; also the transcript from the records, duly certified, of a deed made by John Ticknor to James L. Day, bearing date the 28th of April, 1840, a copy of which is annexed, marked A; also the exemplification of a decree and proceedings in a suit in chancery, filed the 7th of February, 1843, by Joseph Wiswall, as a judgment creditor of John Ticknor, against said Ticknor and James L. Day; a copy of which bill, answers, and decrees are hereto annexed, marked B; also a decree and proceedings in the same court of chancery upon a bill filed March 1st, 1845, by the president, directors, and company of the Bank of Mobile, James Stewart, and Henry Lazarus, several judgment creditors of said Ticknor, and against said Ticknor and James S. Day, which bill was similar in its form and object to the bill of Wiswall, and was served on the defendant, Ticknor, on the 1st March, 1845; a copy of the answer of Day and the decree is annexed, marked C. The defendant then proved that Waring, the receiver of the court of chancery in the above two suits, went into the possession of the property sued for on St. Francis st., as such receiver on the 27th day of June, 1845, and remained in possession as such receiver until the same was sold by him on the first Monday of March, 1847; that notice was given at the marshal's sale, when the property was bid off by Dargan, of the pendency of the above named suits in chancery, and the claims of the complainants there asserted, and that he was, as receiver aforesaid, then in possession of said property under the decrees in chancery in the above suits. The property was duly sold by the receiver on the 1st day of March, 1847, to K. B. Sewall for six thousand five hundred dollars, and a deed of the same made to him by the said receiver and master in chancery; and on the tenth day of May, 1847, the same was conveyed by said Sewall to the defendant, Joseph Wiswall; it was also shown that the purchaser from the receiver went into possession, and that the whole amount of the purchase money was paid and appropriated under the directions of the court of chancery.

The defendant then offered in evidence the transcript of a decree and proceedings had in a court of chancery, in Mobile, upon the petition of Edward S. Dargan against Moses Waring, receiver, Joseph Wiswall, John Ticknor, and James L. Day, a copy of which is heretoannexed, marked exhibit D; which decree had been affirmed by the supreme court; C. Cuyler, the deputy marshal who made the sale to Dargan, testified, that no money whatever was paid upon said sale, but that Dargan gave his note to the marshal for the costs.

John F. Adams testified that he acted as the attorney of C. S. Fowler & Co. in recovering their judgment in this court, and had ever since represented said judgment; and that E. S. Dargan, *from* some time prior to the marshal's sale, represented the judgment of Crouch and Sneed; that it was agreed between said attorneys, Adams and Dargan, representing said judgments, that the land should be sold upon them, and bid off in the name of Dargan, and that if the title thus acquired should enable Dargan to recover the property, the judgment of C. S. Fowler & Co. should be paid out of it; but that if the property should not be recovered by such title, then the sale was to be considered a nullity, and no money to be paid whatever on account of it; and that this was the understanding of Adams, but that after the sale he yielded to the views of Dargan, and signed a memorandum to the effect that Dargan should be a trustee for the parties. It was further in evidence that with the arrangements between Dargan and Adams there was no connexion on the part of Ticknor, the defendant in the judgment, and no assent was given by him to them.

Adams also testified that as the representative of the judgment of C. S. Fowler & Co., he entered a motion in this court at the spring term, 1847, to amend the marshal's return made upon the execution in that case to show that no money was in fact paid on said bid of Dargan; and said motion was produced and read to the jury and is still pending and undetermined.

Defendant then offered to read a bill filed in the chancery court of Mobile, on the 18th February, 1847, in the name of David A. Hall, assignee in bankruptcy of C. S. Fowler & Co., against John Ticknor, James L. Day, Moses Waring, receiver, Joseph Wiswall, Bank of Mobile, James Stewart, and Henry Lazarus, the object of which bill was to reach and have appropriated to the payment of said judgment of C. S. Fowler & Co. the proceeds of the sale of the property to be made in that court upon the bill of said Wiswall and others; said bill was filed by J. F. Adams, as solicitor of the parties, and sets forth, among other things, the following: "That the said premises were sold on the 1st of July, 1845, by the marshal to Edward S. Dargan, for the nominal sum of $7,500, and the marshal executed to said Dargan his formal deed for the same, and thereupon made return upon the process that the premises were sold for the sum above named. And your orator now averreth, that in fact neither the sum of $7,500, nor any other sum, was paid by said Dargan to the plaintiffs in execution, or to any person for them, but his said bid was made upon his stipulation made with the plaintiffs' attorney, and on the distinct understanding and intent on his part, that in case his title under the said sale should prove to be valid and effectual in law, he would pay to the said plaintiffs or your orator so much money upon his said bid as he might thereafter be able to realize by a sale; but if the said title should not prove to be available nor enable him to obtain possession, that in that case he should pay nothing." Said bill is not sworn to, and is still pending in the court of chancery; to the introduction of this bill as evidence, the plaintiffs objected on the ground that it was not connected with the plaintiffs in this suit, and as being the statement of counsel, merely, and not evidence against C. S. Fowler & Co.; and the objection was sustained and the said bill excluded; to which the defendant, by his counsel, excepted; this was all the evidence offered in the case, and thereupon the court charged the jury:

That the deed from Ticknor to Day, of April 28th, 1840, was upon its face, in connexion with the answers of Ticknor & Day, fraudulent as to creditors, and void; to which the defendant excepted.

The court further charged, that the title of Dargan, derived from the marshal's sale, under the judgment of C. S. Fowler & Co., and of Crouch & Sneed, was superior to the title of Wiswall, derived from the sale under the chancery proceedings, and entitled the plaintiffs to recover; to which the defendant, by his counsel, excepted.

The court further charged the jury that the proceedings and decree in the court of chancery upon the petition of Dargan, was not binding or conclusive upon the parties in this suit; that it was not necessary for Dargan to go into the court of chancery for aid, that his remedy was at law, and the proceedings there upon his petition had no effect whatever upon his title, and must be wholly disregarded in this suit; to which the defendant, by his counsel, also excepted, and requested the court to give the following charges to the jury:

1. That, if the jury believe the deed from the marshal to Dargan was made without any pecuniary consideration, it could pass no title; which the court refused; but charged, that under the evidence before them it was valid if no money was paid by the purchaser; to which the defendant excepted.

2. That the filing of Wiswall's bill in chancery, and the proceedings thereon to a final decree in his favor, gave him a specific lien upon the property of Ticknor from the commencement of his suit, which could not be divested by any subsequent proceedings upon the older judgments under which the plaintiffs here claim; which was refused, and the defendant excepted.

3. That the receiver of the court of chancery in the suits of Wiswall and others, being in possession of the property under the order of that court at the time of the marshal's sale, and notice thereof being given at that sale, affected the purchaser and invalidated his title; which was refused; and the court charged that such possession and notice in no manner affected the marshal's sale or the purchaser under it; and the defendant excepted.

4. That the proceedings in the court of chancery, upon the petition of Dargan, the purchaser at the marshal's sale, was conclusive upon the parties and his title thus acquired; which was refused, and the defendant excepted.

5. That under the statutes and decisions of Alabama, it is not the oldest judgment, but the judgment lien that has been kept alive by the oldest execution regularly issued without the loss of a term, that has the priority as between judgment creditors; which was refused, and the defendant excepted.

6. That if neither Dargan nor Edward Hall were in possession of the property on the 3d of April, 1848, the deed of that date from Dargan to Hall was void and conveyed no title; this was also refused; and the court charged that, under the evidence before the jury, this deed was valid; to all which the defendant excepted.

And the defendant tenders the above as his bill of exceptions in the case, and prays the court to sign and seal the same, which is done accordingly.

WILLIAM CRAWFORD. [SEAL.]

Exhibit X.

THE STATE OF ALABAMA, *Mobile county.*

Know all men by these presents, that I, E. S. Dargan, of the city of Mobile, for and in consideration of one dollar, to me paid, and other good considerations me thereto moving, do hereby remise, release, and forever quit claim, unto Edward Hall, of the city of Baltimore, all my right, title, claim, and interest in and to a certain lot of land, situated in the city of Mobile, between Water and Commerce streets; bounded on the south by St. Francis street, on the west by property belonging to Beach, Ela & Co., on the north by Planter's street, and on the east by property formerly belonging [to] M. D. Eslava, and containing thirty-five feet front on St. Francis [street,] and running back to Planter's street the same width; which lot was conveyed to me by William Armstead, marshal, by deed bearing date the 13th day of August, 1845, and was sold by said Armstead by virtue of executions named in the deed.

To have and to hold said lot of land, with all the improvements thereon, to himself and his heirs forever; but on the same trusts and on the same terms I now hold said property, and which are described by a memorandum on the back of the deed by Armstead to me, signed by myself and John F. Adams.

In testimony whereof I have hereto set my hand and seal this the 3d April, 1848.

E. S. DARGAN. [SEAL.]

Exhibit A.

This indenture, made at Mobile, in the county of Mobile, and State of Alabama, the 28th day of April, A. D. 1840, between John Ticknor, of said Mobile, in the county of Mobile, of the first part, and James L. Day, of the said Mobile, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twenty-five thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, hath granted, bargained, sold, released, aliened, remised, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all that certain lot of ground, with the store and improvements thereon, situate, lying, and being in said city of Mobile, and described as follows, to wit, fronting on the north side of St. Francis, between Water and Commerce streets, and extending through to Planter's street, being thirty feet front on St. Francis, and the same width through to Planter's street, fronting thereon also thirty feet, bounded on [the] south by St. Francis street, east by a lot and store now or late of M. D. Eslava and P. A. Remson, north by Planter's street, and west by a lot lately belonging to Alford Bill; the lot herein conveyed being a lot conveyed by Joseph E. Sheffield and wife to said John Ticknor, by deed, 15th May, 1834, recorded in book M, in the records of Mobile county; also another lot heretofore conveyed by J. B. Leavens to the said party of the first part, together with all the buildings and improvements thereon, and described as follows: bounded east by St. Joseph street, west by a lot now or late of Sylvester Audry, north by a lot of George Price and William Jones, jr., and south by a lot now or late of Samuel Stibbins, jr., having a front on St. Joseph street of forty-nine feet, with a depth of one hundred and forty-nine feet; together with all and singular the tenements, hereditaments, privileges and appurtenances, unto the above mentioned and described premises belonging, or in anywise appertaining; to have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said John Ticknor, for himself and his heirs, the aboved described and hereby granted and released premises, and every part and parcel thereof, with the hereditaments and appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and forever defend. And also the said party of the first part, (in consideration as aforesaid,) hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said party of the second part, his heirs, executors, and administrators, a certain negro woman named Minta, aged about twenty-two or twenty-three years, together with her child Sally, aged about fifteen months; also all the right, title, interest, claim, [and] demand which the said party of the first part has in and to the steamboat called the Factor, it being one-fourth thereof; also all and singular the stock of groceries, chandlery, goods, wares, and merchandise, now being in and on the first above described premises; also a barouch carriage and two horses, and all the household furniture of the said party of the first part, consisting of cabinet-ware, beds and bedding, paintings and engravings, silver wares, cutlery, crockery, and glass ware, table furniture, kitchen furniture, &c., &c. Provided, nevertheless, and this instrument is made and executed upon the express condition, and with the stipulations, qualifications, and limitations following, to wit, whereas, the said party of the first part is indebted to the said party of the second part in sundry large sums of money, for money had and received, and also for money paid, laid out, and expended, by said party of the second part, for the use, benefit, and advantage, and at the special instance and request of the said party of the first part; and whereas, the said party of the first part is largely indebted to the said party of the second part in book account, and for goods, wares, and merchandise sold, and sundry large amounts on bonds, bills, notes, and other contracts; and whereas, the said party of the second part has, by various endorsements of notes and other obligations, and by acceptances of bills of exchange, and by assuming and obligating himself to pay sundry other debts and liabilities of the said party of the first part, and by becoming security of the said party of the first part on various instruments in writing, all at the special instance and request, and for the use, benefit, and advantage of the said party of the first part, hath made himself, the said party of the second part, liable to pay, both now and hereafter, as said liabilities are and from time to time may fall due, large sums of money on the accounts of, and for the benefit, and behoof, and advantage of said party of the first part, as is above set forth. Now, if the said party of the first part shall well and truly pay, or cause to be paid, on or before the first day of December, A. D. 1841, all his indebtedness to the said party of the second part as aforesaid, and shall duly pay or cause to be paid, and fully discharged, all liabilities of the said party of the second part, as above set forth, so that the said party of the second part shall be saved harmless therefrom, and in no wise damnified thereby, then and in such case these presents, and every thing and matter herein contained, shall cease, determine, and be utterly void, any thing contained herein to the contrary notwithstanding. And it is covenanted and mutually agreed, by and between the said parties, that the said John Ticknor the said party of the first part, and his assigns, shall and may hold and retain in his possession and use the goods, wares, and merchandise, furniture, and all the other personal property before described and mortgaged, and also the above described and mortgaged real estate, and to occupy the same, or lease the same, and receive the rents therefor; and also to sell and dispose of the goods, wares, furniture, and the other personal property as aforesaid, and from the nett proceeds thereof pay and satisfy as may be the above indebtedness, and the said liabilities, rendering an account thereof to the said party of the second part as often as he may reasonably request*ed*. And it is further agreed, by and between the said parties, that, in case it shall so happen that the said party of the first part shall not pay, or cause to be paid, his indebtedness to the said party of the second part, as aforesaid, on or before the said first day of December, A. D. 1841, and shall not pay and fully discharge all the other aforesaid liabilities when they may fall due, so as to save harmless the said party of the second part, then, and in that case, the said party of the second part shall be, and hereby is, fully authorized and empowered to dispose of the above described real estate, either at private sale or at auction, as he may think best, for cash; and his conveyance of the same shall be, in every respect, as binding on the said party of the first part, his heirs, executors, administrators, and assigns [as if] *of* the same were executed by the said party of the first part, the said party of the second part giving thirty days notice of the time and place of such sale in some newspaper published in the city of Mobile.

In witness whereof the parties hereto set their hands and seals, this 28th day of April, A. D. 1840. JOHN TICKNOR. [SEAL.]

Signed, sealed, and delivered in presence of—

The words said party of the first part, on the third page, interlined before signing.

WILLIAM BROOKS.

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THE STATE OF ALABAMA,
Mobile county, ss.

Be it remembered, that the above named John Ticknor appeared personally before me, William Brooks, a notary public in and for said county, dully commissioned and sworn, and acknowledged that he signed, sealed, and delivered the foregoing deed of mortgage to James T. Day, on the day and year, and for the use and purposes, therein mentioned.

Given under my hand and seal of office, this 26th day of June, A. D. 1840.

WILLIAM BROOKS,
Notary Public.

THE STATE OF ALABAMA,
Mobile county, ss.

I, Drury Thompson, clerk of the county court of said county, certify that the foregoing is a transcript of the record of a deed from John Ticknor to James L. Day, as recorded in my office in Book No. 1, pages 383, 384, and 385.

Given under my hand and seal of office, this 28th day of January, A. D. 1843.

D. THOMPSON, *Clerk.*

Exhibit B.—Exhibit B.

In chancery, first chancery district, State of Alabama.

To the chancellor of the southern chancery division of the State of Alabama:

Humbly complaining, showeth unto your honor, your orator Joseph Wiswall, of the city and county of Mobile, in the State of Alabama, that heretofore, to wit, on the fourteenth day of June, in the year one thousand eight hundred and forty-two, a day of the spring term of said year, of the circuit court of the State of Alabama, for said county, your orator, in the said circuit court, by the consideration and judgment thereof, recovered against John Ticknor, of the said city and county, one of the defendants hereinafter named, the sum of two thousand two hundred and thirty-three dollars and seventeen cents damages, together with the costs of suit, which were then and there adjudged to your orator in and by said court, as by the proceedings in said suit, now of record in the office of the clerk of said court, in the county of Mobile, or by an exemplification thereof, reference being thereunto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

Folio 2. And your orator further shows unto your honor, that the judgment, so recovered in manner as aforesaid, remaining unpaid and unsatisfied, your orator, after the adjournment of said court for the term at which the same was recovered, sued and prosecuted out of said court, pursuant to law, upon said judgment a writ of fieri facias, commonly called an execution, returnable to the next succeeding term of said court, to wit, the fall term of the aforesaid year, and delivered the same to the sheriff of Mobile county, to be executed in due form of law.

And your orator further shows to your honor, that the sheriff
Folio 3. of Mobile county, to whom said writ was delivered as aforesaid,
afterwards, on the return day thereof, returned the same
"no property found in my county," as by the said writ and return of the sheriff endorsed thereon, now on file in the office of the clerk of said court, more fully appears, and to which, or an exemplified copy thereof, your orator prays leave to refer, should it be necessary so to do.

And your orator further shows to your honor, that he is informed
" 4. and believes it to be true, that the said John Ticknor,
since the return of the execution issued upon your orator's said judgment as aforesaid, has acquired and is possessed of an amount of personal property sufficient to pay and satisfy your orator's said debt, or a large part thereof; the situation, value, and particulars of which are unknown
to your orator; and that your orator is fearful that the said
" 5. Ticknor will place the same beyond the jurisdiction of this court,
or of a court of law; and that your orator, for the purpose of subjecting the same when discovered to the payment of said judgment, as well as for the purpose of keeping alive the lien created by the delivery of the aforesaid execution to the sheriff upon any personal property of the said Ticknor, which when discovered shall be found subject to levy and sale by an execution at law, has lately, pursuant to the statute in such cases made and provided, sued and prosecuted out of
said court an alias fieri facias upon said judgment, returnable
" 6. to the next term of said court, to wit, the spring term, eighteen
hundred and forty-three, and has caused the same to be delivered to the sheriff of Mobile county, to be executed according to law; but your orator is informed that no property of the said Ticknor has yet been found upon which to levy the said alias writ, and that no levy has yet been made by the sheriff of said county, and inasmuch as your orator is ignorant where the said personal property of the said Ticknor, or any part thereof, is now situate, or the nature of the title thereto, and
is unable to ascertain whether the same or any part thereof is
" 7. subject to an execution at law, he is compelled to ask the aid
and interference of this honorable court for discovery and relief in the premises; of all which matters herein above stated, relating to the recovery of said judgment, the issuing and return of said writ, and the issuing of said alias writ, and the proceedings thereon, your orator has been informed by his solicitor in this cause, and your orator believes the same to be true.

And your orator further shows to your honor, that the said
" 8. judgment, so recovered as aforesaid, in favor of your orator
against the said John Ticknor, remains wholly unpaid and unsatisfied, and as your orator believes unrenewed, and the whole amount which the said sheriff was directed to levy for thereon is still equitably

110.

and justly due to your orator from the said Ticknor, upon said judgment, over and above all just claims of the said Ticknor by way of offset or otherwise; and your orator further shows, that the execution issued upon your orator's said judgment, and now in the hands of the sheriff of said county, is the oldest execution running against the said Ticknor; but your orator is informed that there are judgments against said Ticknor which are older than your orator's said judgment, and sufficient in amount to cover all the said Ticknor's legal estate in lands, if any he had at the time the same were recovered.

Folio 9. And your orator further shows to your honor, that this bill of complaint is not exhibited by collusion with the said Ticknor, or for the purpose of protecting his property and effects, or any part thereof, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of your orator's said judgment.

" 10. And your orator further shows to your honor, that the said John Ticknor, heretofore, to wit, on or about the twenty-eighth day of April, in the year one thousand eight hundred and forty, made and executed to one James L.
" 11. Day, defendant hereinafter named, a conveyance or deed of all his real and personal estate, to wit, the store and premises on St. Francis street, in the city of Mobile, then in the possession and use of the said Ticknor as a grocery store, a dwelling-house and lot on St. Joseph street in the same city, the entire stock of groceries, chandlery, goods, wares, and merchandise, contained in said store on St. Francis street, constituting the entire stock in trade of the said John Ticknor, together with one negro woman named Minta, aged about twenty-two or twenty-three years, and her child
" 12. Sally, about fifteen months of age. All his right, title, and interest in the steamboat Factor, being one-fourth part thereof, a barouche carriage and two horses, and all his household furniture, consisting of cabinet ware, beds and bedding, paintings and engravings, silver ware, cutlery, crockery, and glass ware, table furniture, kitchen furniture, &c., as by his said deed purporting to be a mortgage, bearing date the day and year last aforesaid, which your orator alleges is in the possession or under the control of the defendants, or one of them, and which your orator prays may be pro-
" 13. duced as this honorable court shall direct, or by an exemplification of the record thereof duly recorded in the office of the clerk of the county court of Mobile county, in book number one, pages 383, 384, and 385, hereto annexed, (see exhibit A,) will on reference appear, and to which your orator prays leave to refer.

And your orator further shows, that for some years previous to the date of the aforesaid deed the said Ticknor carried on a large mercantile business in the city of Mobile, and by means thereof had accumulated and become possessed of a large and valuable estate, both real and personal; and your orator is informed that he had also
" 14. incurred a large amount of liabilities upon which, at the

time said deed was made, suits were pending against him, and judg-
ments therein about to be had, and that judgments were recovered
against him in some of said suits in a few days after the date of said
deed, and for a large amount; and your orator charges, that the said
John Ticknor made and executed the aforesaid deed to Day, with the
fraudulent intent to delay, hinder, defraud, and deceive creditors, and
to avoid the payment of the judgments about to be recov-
" 15. ered against him, and that it was not a bona fide transaction
between the said defendants; and your orator further
charges, that said Ticknor was not indebted in a large amount to said
Day, and that said Day was not liable in a large amount for said Tick-
nor, as in said conveyance is stated; but that the said pretended mort-
gage was devised by collusion and fraud between said parties to enable
the said Ticknor to retain the possession and use of all his
" 16. said property, and to carry on his said business to his own
use and benefit, free from the claims and executions of his
said creditors; and in confirmation of their allegations, your orator
charges, that of judgments recovered against the said John Ticknor, in
the county of Mobile, since the date of the said pretended mortgage,
amounting to above the sum of sixty thousand dollars, not one dollar
has yet been paid, as by the records of the several courts of record in
said county will on reference appear.

And your orator further charges, that the said Ticknor has from the
date of said pretended mortgage remained in the actual possession of
all said property, and has occupied said store on St. Francis
" 17. street, and carried on the grocery and chandlery business
therein, and has sold and disposed of said stock of goods,
referred to in said deed, from time to time, and from time to time has
renewed and added to the same by purchase; and that he has leased
and rented said dwelling-house on St. Joseph street, and collected the
rents thereof, and applied the same to his own use; and that he is now
carrying on said grocery business, and collecting said rents for his own
benefit, without applying any part thereof to the payment
" 18. of his just debts; and your orator believes and charges it to
be true, that the value of all the property, real and personal,
embraced in said deed, and intended to be conveyed thereby, was at
the date of said deed, at a fair and just estimate, at least seventy thou-
sand dollars; and your orator shows unto your honor, among other
badges of fraud apparent upon inspection of the said pretended mort-
gage, the following, that *is* does not appear from said deed, or from any
schedule thereto annexed, what amount the said Ticknor was indebted
to the said James L. Day, or for what amount, or upon what specific
instrument, the said Day was liable for said Ticknor, and
" 19. that there is no inventory or account of the stock of groce-
ries, chandleries, goods, wares, or merchandise, contained
in the said store on St. Francis street, or value thereof, or of the house-
hold furniture, or the value thereof; and further, that the said Ticknor
was authorized by said deed not only to remain in possession of all

said property, and to lease and collect the rents of the real estate, but absolutely to sell and dispose of all or any part of said personal estate, without the advice, consent, or control of the said pretended mortgage,
as by said deed when produced, or the exemplified copy
Folio 20. thereof, which is hereto annexed; and to which your orator
prays leave to refer, will on reference among other things,
more fully and at large appear.

And your orator charges, that there is personal property now in the possession of said Ticknor, or under his control and direction, covered or intended to be covered by said pretended mortgage, and upon which said James L. Day has no bona fide, legal, or equitable claim, sufficient to pay and satisfy your orator's said judgment, but which in consequence of said pretended mortgage, your orator cannot reach by means of an execution at law.

Your orator further shows to your honor, that he has rea-
" 21. son to believe, and does believe, that the said John Ticknor
has equitable interest in things in action, or other property
of sufficient value to satisfy your orator's said judgment, exclusive of all prior just claims thereon, which your orator has been unable to discover and reach by execution on said judgment.

And your orator further shows, that he has been informed and believes it to be true, that the said John Ticknor has a considerable amount of money or of legal and equitable debts, claims, or demands, due to him from different persons whose names are unknown to your
orator, consisting of book accounts, due bills, drafts, checks,
" 22. promissory notes, bonds, mortgages, judgments, or *or* other
securities, or things in action; or that he has negro slaves,
goods, wares, and merchandise, money or other personal property, either in possession or held in trust for him, the situation, value, and particulars of which are unknown to your orator, and that your orator is fearful that the said Ticknor will make way with or place the same beyond the control of this court or of a court of law.

And your orator further shows to your honor, that he is informed and
believes it to be true, and so charges, that the said John
" 23. Ticknor has various articles of plate and other personal
property, and evidences of debt and things in action, either
in his own possession, power, or custody, (consisting of money, coin, negro slaves, goods, wares, and merchandise, bank notes, bonds, mortgages, books, or other accounts, or other evidences of debt, stock in private or in corporate companies, or things in action, or personal property of some other kind or character,) or which are holden for him by said James L. Day, or by some third person in secret trust, or under some colorable title for his benefit, or for the benefit of his family, but which
is under his control or direction; and in particular that the
" 24. said John Ticknor is a part owner of, or has an interest in,
a certain steamboat, called the Creole, now employed in
navigation between the ports of Mobile and New Orleans, in the name of said James L. Day, who is also a part owner and the master of said

steamboat, or in the name of some other person or persons to your orator unknown, in secret trust, or under some colorable title, for the benefit of said Ticknor, or for the benefit of his family, but which is under his control and direction; and that the said Ticknor is also the owner of a certain slave, named Ramsy, which slave is now
Folio 25. in his possession and use, or that he has some interest in said
slave, in the name of said James L. Day, or *if* some other person in the like secret trust, and of which secret trust the said Ticknor has some parol or written evidence, but which he refuses to disclose to your orator. And your orator charges that said Ticknor is now receiving the benefit of his part of said steamboat Creole and the wages of said slave, and appropriating the same to his own private use. And your orator further charges that the interest of said Ticknor in said steamboat Creole is of the value of ten thousand dollars,
" 26. and is amply sufficient, exclusive of all just and equitable
liens thereon, for the payment and satisfaction of your orator's said judgment.

And your orator further charges that *that* the said John Ticknor is secured and indemnified against the said debt due your orator as aforesaid, by one Munson Sturgis, who is the principal therein, by a mortgage pledge or deed of trust of certain negro slaves and other property made by the said Munson Sturges to said Ticknor, or to said James L. Day, or to some other person or persons, for the security or indem-
" 27. nity of said Ticknor on account of said debt; which mort-
gaged property is in the possession or under the control and direction of said Ticknor, and is amply sufficient for the payment and satisfaction of your orator's [said] judgment, and should have been so applied by said Ticknor; but that your orator is ignorant of all the particulars thereof, and that said Ticknor refuses either to disclose to your orator the same, or to apply the said property, so mortgaged
" 28. or pledged for his security and indemnity as aforesaid, to
the payment of your orator's said judgment, or any part thereof.

And your orator believes, and so charges and insists, that the property and things in action so possessed by or held in trust for the said Ticknor, or his family, are of a value sufficient to pay and satisfy your orator the amount due him on the aforesaid judgment; and your orator well hoped that the said John Ticknor would have applied the same, or the proceeds thereof, or so much of the same as might be neces-
" 29. sary to the payment of the amount so due to your orator as
aforesaid, as in equity or good conscience he ought to have done.

But now so it is, may it please your honor, that the said John Ticknor, combining and confederating with the said James L. Day, and with divers other persons whose names are at present unknown to your orator, but which, when discovered, he prays leave to add as parties to this his bill of complaint, with proper and able words to charge them in the premises, contriving how to injure and oppress your orator in this be-

half, has altogether neglected and refused to pay your orator's
Folio 30. aforesaid just demand against him, alleging divers unfound-
ed objections and pretences in that behalf; sometimes the
said John Ticknor pretends that he is poor and unable to pay the
amount of the said judgment, the contrary whereof your orator charges
that he believes to be the fact, and that he is able to pay and satisfy the
amount of said judgment out of the personal property, money, or things
in action now in his possession, or subject to his control; and that the
said John Ticknor has money in coin or bank bills, bonds,
" 31. mortgages, promissory notes, bills of exchange, drafts and
acceptances, stocks, book accounts, and other things in ac-
tion of large amount, and other personal property, and rights and cre-
dits; and if the same are not under his immediate power and control,
that they are held in trust by said James L. Day, or by some other per-
son or persons for the benefit of the said Ticknor, or his family; all
which actings, doings, and pretences of the said John Ticknor and
James L. Day, and of his other confederates and trustees, and contrary
to equity and good conscience and trust, to the manifest
" 32. wrong and injury of your orator. In tender consideration
whereof, and for as much as your orator is remediless
in the premises at common law, and cannot, except by the aid and
interference of this honorable court, obtain a complete discovery of the
property and estate of the said John Ticknor, both real and personal,
nor have the same when discovered, or so much thereof as is not subject
to a sale on execution, applied to the payment of your orator's aforesaid
judgment:

" 33. To the end, therefore, that the said John Ticknor and
James L. Day, and his other confederates, when discover-
ed, may, upon their respective oaths, full, true, direct, and perfect
answers make, according to the best of their knowledge, information,
recollection, and belief, to all and singular the matters and things in
this, your orator's, bill of complaint contained, and that as fully and at
large, paragraph by paragraph, and sentence by sentence, as if the same
were here repeated, and they severally and specially thereunto interro-
gated; and especially that they may severally set forth and
" 34. discover the consideration, if any, of the aforesaid pretended
mortgage from Ticknor to Day, an exemplified copy of
which is hereto annexed; the amount of indebtedness and liability, if
any, which the same was made to secure, and all the particulars there-
of, how the same originated, and the nature of the said liabilities, and
each and every instrument creating the same, and who were the holders
and owners of such instruments, and each of them, if any, existing at
the time of the execution of said mortgage, and referred to therein; and
whether any of said instruments creating liabilities on the
" 35. part of said Day, and which of them, have been paid, and
by whom, and which of them, if any, are outstanding and
unpaid, and in whose hands; and whether the said Ticknor has paid
any, and what part, of his debt to said Day, in said mortgage referred

to; and when, and by what means, and what part thereof remains due
now and unpaid. And that they may now, in like manner, set forth
and discover the whole value of the stock of groceries and chandlery,
goods, wares, and merchandise, in said store on St. Francis
Folio 36. street contained at the time said mortgage was made, as
well as of the household furniture, plate, &c., in said mortgage
referred and intended to be conveyed. And may annex to their
answers to this bill, a true account or inventory of all said stock of groceries,
chandlery, goods, wares, and merchandise, and of all said household
furniture, plate, &c.; and may state what part thereof, if any,
both of said stock of groceries, &c., and of said furniture, plate, &c.,
has been sold, and to whom, and for what prices, and what part remains
unsold, and in whose possession, and power, and
“ 37. value, of all and every portion thereof so remaining unsold.
And that they may, in like manner, set forth and discover
how the moneys received from the sale of said stock of goods, and said
furniture, have been appropriated, to what purposes, and to whose use
and benefit, and whether additions have not been made, from time to
time, to said stock of groceries, &c., in the store on St. Francis street;
and whether said business has not been continued and carried on, and
if so, by whom, with whose means, and for whose benefit,
“ 38. and at whose risk. And that they may, in like manner,
set forth and discover whether said Ticknor's interest in
said steamboat Factor, and in the said negro slave Minta and her child
Sally, and the said barouche carriage and horses, or either and which
of them, have been sold; and if so, when, to whom, and for what prices,
and how the moneys arising from such sales have been appropriated;
or if any or all of them remain unsold, state where the same are, in
whose possession and control.

And that they may, in like manner, set forth and *deliver*
“ 39. whether a certain negro slave named Ramsay, now in the
possession of said Ticknor, was not bought in New Orleans,
or elsewhere, with the money or credit of said Ticknor; and
whether the bill of sale of said negro slave was not taken in the
name of said James L. Day, or of some other person in secret trust for
said Ticknor or his family; and that they may particularly state when
the said slave was purchased, and came into the possession of said Ticknor,
and who paid for him, and who holds the bill of sale, and for
whose benefit and use he was so purchased and now held.

And that they may, in like manner, discover what part
“ 40. of said steamboat Creole is owned by said Ticknor, and is
held in the name of said James L. Day, or in the name of
some other person or persons in secret trust for said Ticknor, and the
value thereof; and whether said Ticknor has not, from time to time,
received his share of the profits of said boat, or been credited therewith,
and is not now, from time to time, receiving the same; and whether
the same is not subject to his power and direction. And if
“ 41. the said Day claims to be himself the owner of nearly one-

half of said boat, for which he has paid the sum of twenty thousand dollars, or thereabouts, that he may particularly state and discover whether any or what part of said sum was received by him from said Ticknor, or from some other person or persons on said Ticknor's account, or from the sale of any part of the property conveyed by said Ticknor to him by the mortgage aforesaid, or from any other property or means placed in his hands by said Ticknor, or by Folio 42. any other person or persons for said Ticknor's account, or otherwise how he obtained the money so paid and invested in said steamboat Creole, and every part thereof.

And that the said defendants may, in like manner, set forth and discover what real estate there is to which the said Ticknor has any title, either in possession, reversion, or remainder, where situated, the boundaries, description, and value thereof, and whether, according to the best of their knowledge, information, or belief, there is any real " 43. estate held by a third person or persons, made under any secret trust or colorable title for the benefit of said Ticknor, or for the benefit of any of his family; and when such trust was executed, and how, and by whom, and who are the witnesses to the same, and whether by deed or otherwise; and that they may set forth a copy of any such deed or assignment. And that the defendants may set forth and discover what bonds and mortgages the said Ticknor has, and the amount thereof; whether in his own name, or otherwise, and where the mortgaged premises are situated, the description thereof, " 44. and the *and the* sum secured thereby, and to whom, and when, and where, and how payable, according to the condition thereof.

And that they may also set forth and discover whether the said John Ticknor has any personal property, of any kind or description whatsoever, where the same is now situated, and the value thereof; and whether he has any bonds, notes, stock, bills of exchange, book accounts, or other written or documentary evidences of debt, or other things in action, either in his possession, power, custody, or control, or in the possession, power, custody, or control, of any third person or " 45. persons for his benefit, and held by assignment, or by any other, and what, evidence of transfer; and if he has so set forth the respective amounts thereof, from whom due, and to whom payable; and whether there is or are any person or persons whatever, who is or are indebted to him in any sum or sums of money, whether now due, or to grow due, or any contract, bargain, or agreement, written or oral, heretofore made; and to set forth the amount of such indebtedness respectively, and from whom due, or to become due, and when payable and whether the said John Ticknor has any mo- " 46. ney, in coin or in bank notes, in his possession or custody, or under his control, or held in trust by said James L. Day, or by some third person or persons, and by whom, for his use, or for the use of his family, or deposited in any, and what, bank, and the amount thereof.

And that the said John Ticknor may come to a just and fair account touching the amount due to your orator, or the aforesaid judgment, and that he may be decreed forthwith to your orator the amount due him on the aforesaid judgment; and, in default thereof, that such
Folio 47. property as shall be discovered to belong to the said John Ticknor, or to which it shall be found he has any right, including both real and personal estate, and things in action, may be realized and converted into money, and appointed under the order, direction, and decree of this honorable court towards the satisfaction of your orator's said judgment, and the costs and expenses incurred by your orator in this behalf to be taxed. And that the said deed, an exemplified copy thereof is hereto annexed, made by said Ticknor to said Day, bearing date the twenty-eighth day of April, in the
" 48. year eighteen hundred and forty, be declared null and void, and that the said Day may truly account for all the estate, property, and effects of said Ticknor, which have at any time come to his hands under color of said deed; and that some discreet and proper person may be appointed by this honorable court a receiver in this cause, to collect and take charge of the property, money, and things in action, that may be found to belong to the said John Ticknor, or to which he may or can, in any manner, be entitled, either in law or in equity; with power to convert the same into money, and with such
" 49. other powers as are usually granted to receivers in similar cases.

And that your orator may have such further or other relief in the premises as the nature of his case may require, and as shall be agreeable to equity and good conscience, may it please your honor to grant unto your orator a writ of injunction, to be issued out of, and under, the seal of this honorable court, to be directed to the said John Ticknor and James L. Day, and their confederates when discovered, and the said Ticknor's assignee or assignees in trust, attorneys, coun-
" 50. sellors, clerks, trustees, and agents, enjoining and restraining them, and each and every of them, from assigning, transferring, or making any other disposition of the real estate, personal property, things in action, stocks, or evidences of debt of any kind whatsoever, to which the said John Ticknor now is in anywise entitled, including bonds, mortgages, notes, bills of exchange, book accounts, moneys in coin or bank notes, and moneys in deposit, and restrain the said John Ticknor from receiving any money now due, or to become due, to him, whether from individuals or from bodies corporate, and from making any assignment, or other disposition thereof, or in
" 51. any other manner intermeddling with any moneys due or to grow due to him, or with any bond or mortgage, promissory note, scrip for stock, or stock itself, bill of exchange, book account, or other evidence of debt or thing in action, to which he may be in any manner entitled; and from paying any money, in coin or bank notes, to any one who may or can have any claim or demand against him, or making any other disposition [of] any moneys, personal property, or

things in action, or from doing any other act to enable his other cred-
itors to obtain his property, which your orator has been un-
Folio 52. able to discover or reach by execution, until the further
order of this honorable court.

May it please your honor to grant unto your orator a writ of subpœna of the State of Alabama, issuing out of and under the seal of this honorable court, to be directed to the said John Ticknor and James L. Day, commanding them, and each of them, at a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your honor in this honorable court, then and there to answer all and singular the premises, and to stand to, abide, and perform
such order and decree therein as to your honor shall seem
" 53. agreeable to equity and good conscience. And your ora-
tor will ever pray, &c.

JOS. WISWALL.
K. B. SEWALL,
Solicitor and counsel for complainant.

STATE OF ALABAMA, *Mobile county, ss.*

On the seventh day of February, 1843, before me, M. J. McRae, register of the court of chancery, personally appeared the above named Joseph Wiswell, and under oath [states] that he has heard read the above bill, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information or belief, and as to those matters he believes it to be true.

JOS. WISWALL.

Subscribed and sworn to before me, this seventeenth day of February, A. D. 1843.

M. J. McRAE, *Reg.*

Let writ of injunction issue according to the prayer of complainant, upon his giving bond and security in the sum of one thousand dollars, conditioned to be void on complainant's paying to defendants all costs and damages they may sustain and hold; this injunction to be dissolved March 4th, 1843.

J. BRAGG.

Filed February 7th, 1843.

M. J. McRAE, *Reg'r.*

THE STATE OF ALABAMA, *Mobile county.*

Know all men by these presents that we, Joseph Wiswall, and Moses Waring, his security, are held and firmly bound unto John Ticknor and James L. Day, their executors or administrators, in the just and full sum of one thousand dollars; for the faithful payment of which said sum we jointly and severally bind ourselves, our heirs, executors, and administrators, and the heirs, executors, and administrators of each of us, firmly by these presents. Sealed with our seals, and dated this thirteenth day of March, A. D. 1843.

The condition of this obligation is such, that whereas the above bounden Joseph Wiswall heretofore, to wit, on the 7th day of February, A. D. 1843, filed his bill of complaint against the said John Ticknor and James L. Day, in the court of chancery for the first district of the southern chancery division of said State, praying, among other things, for a writ of injunction to restrain the said Ticknor and Day, and their confederates, and the said Ticknor's assignee or assignees in trust, attorneys, counsellors, clerks, trustees, and agents, and each of them, from certain acts in said bill particularly described, and for a description of which reference is hereby had to said bill on file as aforesaid in the office of the register in chancery at Mobile. And whereas the said Wiswall has obtained on his said bill the fiat of his honor, John Bragg, judge of one of the judicial circuits of the State of Alabama, of the date of the 4th March, 1843, requiring an injunction to issue according to the prayer of the said complainant. Now, if the said Joseph Wiswall shall pay and satisfy to the said John Ticknor and James L. Day all costs and damages they may sustain should the said injunction be dissolved, then this obligation to be null and void and of no effect, but otherwise to be and remain in full force, effect, and virtue.

JOS. WISWALL, [SEAL.]
MOSES WARING. [SEAL.]
[SEAL.]

STATE OF ALABAMA, *Mobile county.*

Personally appeared before me, M. J. McRae, register in chancery at Mobile, Moses Waring, who, on oath, says that he is worth more than one thousand dollars, after paying and discharging all his liabilities.

MOSES WARING.

Sworn to and subscribed before me, this 15th day of March, A. D. 1843.

M. J. McRAE, *Reg'r.*

Filed March 15th, 1843.

M. J. McRAE, *Reg'r.*

Answer of James L. Day.

In chancery.

THE STATE OF ALABAMA, *Mobile county.*

The separate answer of James L. Day to the bill of complaint of Joseph Wiswall, filed in this court against John Ticknor and the said James L. Day.

And the said defendant, now and at all times hereafter, saving and reserving to himself all benefit of exception to the many errors and insufficiencies in the said complainant's bill contained, for answer thereto, or to so much thereof as he is advised is material or necessary for him to answer unto, answering he saith:

That John Ticknor, on the 28th day of April, 1840, being indebted to this respondent in the amounts and in the manner set out in the answer of said Ticknor, to which this respondent begs leave to refer, and to be taken as a part of his answer, did execute to him a deed, as is set out in said bill of complaint.

That the said deed was a bona fide one, and was intended to vest in this respondent the absolute title to all the property conveyed thereby, subject to the conditions therein contained; that in pursuance of the terms of said deed this respondent left the said Ticknor in possession of the stock of goods and store, to be by him disposed of for the benefit of him, the said Day; that Ticknor has continued in possession, buying and selling goods in his own name, but for the use and benefit of this respondent, and with funds furnished by respondent; that the said Ticknor has, since the date of said deed, paid this respondent the sum of ten thousand six hundred dollars from the proceeds of said goods and store.

And this respondent further answering saith, that the value of the stock of groceries, &c., are truly set out in the answer of the said Ticknor, which this respondent prays may be taken as a part of this his answer; that the moneys received from the sale of said goods have been appropriated to the payment in part of the debt due this respondent, and to the purchase of other goods, to keep up the stock and continue the business, which is and has been carried on at the sole risk of this respondent. The slave Ranzy was bought for this respondent in New Orleans, with his own money, and not with the money or credit of said Ticknor, and now belongs to him.

And the said respondent further answering saith, that he owns more than one-third of the steamer Creole; that Ticknor has not, nor has he ever had, any interest in her. That the money paid for her by said Day was not received, either wholly or in part, from said Ticknor, or from any other person or persons on his account, or from the proceeds of said store.

And the said respondent further answering saith, that he does not know of any real or personal property owned by said Ticknor, or held in trust, secret or otherwise, for himself or family, either by this respondent or any other person.

And this respondent admits the indebtedness of said Ticknor to this complainant, as set forth in the said bill, and the recovery of a judgment thereon, and the issuance and return of the execution; that the notes on which said judgments were founded bore date previous to the making of said deed.

He denies all fraud and combination, or any fraudulent design to defraud the creditors of the said Ticknor, or any other person. And now, having fully answered all the allegations in said bill contained, he prays to be hence dismissed with his costs.

GORDON & OGDEN,
Solicitors for respondents.

of us, firmly by these presents. Sealed with our seals, and dated this thirteenth day of March, A. D. 1843.

The condition of this obligation is such, that whereas the above bounden Joseph Wiswall heretofore, to wit, on the 7th day of February, A. D. 1843, filed his bill of complaint against the said John Ticknor and James L. Day, in the court of chancery for the first district of the southern chancery division of said State, praying, among other things, for a writ of injunction to restrain the said Ticknor and Day, and their confederates, and the said Ticknor's assignee or assignees in trust, attorneys, counsellors, clerks, trustees, and agents, and each of them, from certain acts in said bill particularly described, and for a description of which reference is hereby had to said bill on file as aforesaid in the office of the register in chancery at Mobile. And whereas the said Wiswall has obtained on his said bill the fiat of his honor, John Bragg, judge of one of the judicial circuits of the State of Alabama, of the date of the 4th March, 1843, requiring an injunction to issue according to the prayer of the said complainant. Now, if the said Joseph Wiswall shall pay and satisfy to the said John Ticknor and James L. Day all costs and damages they may sustain should the said injunction be dissolved, then this obligation to be null and void and of no effect, but otherwise to be and remain in full force, effect, and virtue.

JOS. WISWALL, [SEAL.]
MOSES WARING. [SEAL.]
[SEAL.]

STATE OF ALABAMA, *Mobile county.*

Personally appeared before me, M. J. McRae, register in chancery at Mobile, Moses Waring, who, on oath, says that he is worth more than one thousand dollars, after paying and discharging all his liabilities.

MOSES WARING.

Sworn to and subscribed before me, this 15th day of March, A. D. 1843.

M. J. McRAE, *Reg'r.*

Filed March 15th, 1843.

M. J. McRAE, *Reg'r.*

Answer of James L. Day.

In chancery.

THE STATE OF ALABAMA, *Mobile county.*

The separate answer of James L. Day to the bill of complaint of Joseph Wiswall, filed in this court against John Ticknor and the said James L. Day.

And the said defendant, now and at all times hereafter, saving and reserving to himself all benefit of exception to the many errors and insufficiencies in the said complainant's bill contained, for answer thereto, or to so much thereof as he is advised is material or necessary for him to answer unto, answering he saith:

That John Ticknor, on the 28th day of April, 1840, being indebted to this respondent in the amounts and in the manner set out in the answer of said Ticknor, to which this respondent begs leave to refer, and to be taken as a part of his answer, did execute to him a deed, as is set out in said bill of complaint.

That the said deed was a bona fide one, and was intended to vest in this respondent the absolute title to all the property conveyed thereby, subject to the conditions therein contained; that in pursuance of the terms of said deed this respondent left the said Ticknor in possession of the stock of goods and store, to be by him disposed of for the benefit of him, the said Day; that Ticknor has continued in possession, buying and selling goods in his own name, but for the use and benefit of this respondent, and with funds furnished by respondent; that the said Ticknor has, since the date of said deed, paid this respondent the sum of ten thousand six hundred dollars from the proceeds of said goods and store.

And this respondent further answering saith, that the value of the stock of groceries, &c., are truly set out in the answer of the said Ticknor, which this respondent prays may be taken as a part of this his answer; that the moneys received from the sale of said goods have been appropriated to the payment in part of the debt due this respondent, and to the purchase of other goods, to keep up the stock and continue the business, which is and has been carried on at the sole risk of this respondent. The slave Ranzy was bought for this respondent in New Orleans, with his own money, and not with the money or credit of said Ticknor, and now belongs to him.

And the said respondent further answering saith, that he owns more than one-third of the steamer Creole; that Ticknor has not, nor has he ever had, any interest in her. That the money paid for her by said Day was not received, either wholly or in part, from said Ticknor, or from any other person or persons on his account, or from the proceeds of said store.

And the said respondent further answering saith, that he does not know of any real or personal property owned by said Ticknor, or held in trust, secret or otherwise, for himself or family, either by this respondent or any other person.

And this respondent admits the indebtedness of said Ticknor to this complainant, as set forth in the said bill, and the recovery of a judgment thereon, and the issuance and return of the execution; that the notes on which said judgments were founded bore date previous to the making of said deed.

He denies all fraud and combination, or any fraudulent design to defraud the creditors of the said Ticknor, or any other person. And now, having fully answered all the allegations in said bill contained, he prays to be hence dismissed with his costs.

GORDON & OGDEN,
Solicitors for respondents.

STATE OF ALABAMA, *Mobile county.*

Personally appeared before me, M. J. McRae, the above named James L. Day, who being duly sworn saith, that the facts set forth in the above *are* sworn, as of his own knowledge, are true; and as to those set forth to the best of his information or belief, he believes them to be true.

JAMES L. DAY.

Sworn to and subscribed this 25th March, 1843, before me,

M. J. McRAE, *Reg'r.*

Filed 25th March, 1843.

M. J. McRAE, *Reg'r.*

THE STATE OF ALABAMA,
Mobile county.

In chancery.

The separate answer of John Ticknor, to the bill of complaint of Joseph Wiswall, filed in this court against the said John Ticknor and James L. Day.

And the said respondent, now and at all times, reserving for himself all benefit of exception to the many errors and insufficiencies in the said complainant's bill contained, for answer thereto, or unto so much as he is advised it is material or necessary for him to answer unto, answering, he says:

He admits the recovery of the judgment, as set out in said bill, the issuance of the fi. fa., and the return of no property; also that an alias fi. fa. has been issued, returnable to the next circuit court; he also admits the existence of prior judgments which are unsatisfied.

And this respondent further answering admits, that on the 28th of April, 1840, he executed the conveyance to James L. Day, which is correctly set out in complainant's bill of complaint; that at the time of the execution of said deed, and for some time previous, he was in possession of a certain lot and dwelling-house, situate in St. Joseph street, in the said city, worth between four and five thousand dollars, also of the store and premises on St. Francis street, occupied by him as a grocery store, and worth about twenty thousand dollars; that his goods at that time in his store, with his notes, accounts, &c., and the value thereof are shown in schedule (B,) hereto attached; that he was possessed of two slaves, and other property, which, with the value thereof, are shown in exhibit B, prayed to be taken as part of this answer; also of the notes and accounts in exhibit C, which are valueless on account of the insolvency of the parties to the same; he further states that all the said above mentioned real and personal property was by the said deed conveyed to the said Day.

And this respondent further answering saith, that the lot on St. Joseph street was under mortgage for the purchase money to J. B. Leavens, that the mortgage has been foreclosed, and the lot sold, yielding no more than the amount due on the mortgage.

And this respondent further answering, that the lot on St. Francis street was incumbered by a judgment in favor of Joseph E. Sheffield & Co. for twenty-five hundred and seven $\frac{24}{100}$ dollars, by a mortgage to N. F. Cunningham & Co. for six thousand eight hundred and fifty dollars, and a judgment in favor of the branch of the Bank of the State of Alabama, at Montgomery, for the sum of seven thousand three hundred and eighty-six $\frac{79}{100}$ dollars; that all the above amounts were assumed and subsequently paid by the [said] James L. Day. He further states, that on the 31st December, 1839, he was indebted to the said James L. Day in the sum of ten thousand six hundred and seventy-three $\frac{60}{100}$ dollars for goods purchased and paid for by said Day, for this respondent, from A. W. & R. M. Haines, at New Orleans, and also in the sum of ten thousand and nine dollars for goods purchased and paid for by said Day, for this respondent, from Richard Lawrence, in New Orleans; that he was also indebted to said Day four thousand dollars for money lent on the 14th December, 1838, for which he held the note of respondent; also in the sum of three thousand dollars for money lent on the tenth day of June, 1839, for which he also held respondent's note; he was also indebted to said Day in the sum of four thousand dollars, money paid to Pope & Powers for said respondent, on the 27th day of March, 1840.

And this respondent further answering says, that in order to secure the said Day for the said above mentioned debts, he executed to him the deed bearing date on the 28th April, 1840, which deed was duly recorded in the office of the clerk of the county court of Mobile county, and this respondent expressly states that the said deed was made bona fide for the purpose of securing the said Day for the money and liabilities aforesaid, and for no other purpose.

He further answering says, that he has retained the possession of the store in St. Francis street, since the date of said deed, and also of the other property, except the house and lot on St. Joseph street, which was sold under a mortgage, as is hereinbefore stated; that he has done business under his own name, and kept his books in his own name, under the direction of the said Day and the provisions of the said deed.

And this respondent further answering denies, that he is in the possession of any personal property upon which the said James L. Day has no bona fide claim, but on the contrary thereof he expressly charges that all the property in his possession belongs absolutely to the said Day, and is in no wise liable to the judgment of the complainant.

And this respondent denies that he has any equitable interest in things in action, or other property; that he has any money, or any legal or equitable debts, claims, or demands due to him, either by book accounts, due bills, drafts, checks, promissory notes, mortgages, judgments, or otherwise, or that he has any negro slaves, goods, wares, merchandise, money, or other personal property, either in possession or held in trust for him by any person whatever, or under any colorable title for his benefit or for that of his family; he has not now, nor has he ever had, any interest in the steamboat Creole, nor does any one hold an interest in her in trust for him or his family.

And this respondent further answering saith, that the slave Ranzy, now in his possession, is the property of the said James L. Day, and that he is not held by him, or by any person, in trust for this respondent, and this respondent receives no part of the wages of the said slave, but they are charged to the expenses of the store; he was purchased for Day in New Orleans.

And this respondent further answering saith, that Munson Sturges executed to this respondent a bill of sale for about twenty negroes, for the purpose of securing this respondent in certain debts due to him, and also against this endorsement in the said bill referred to; that the whole amount of the indebtedness of said Sturges to respondent was from twelve to fifteen thousand dollars; that the said negroes were all delivered to respondent; that since that time all of them, except three now on board the Creole, have been either levied on or attached as the property of said Sturges, or been run off for the purpose of escaping the levy, and that all of the remaining has been recovered by J. T. Haynie, in the county court of Mobile county.

And this respondent further answering saith, that the said Day has paid all the liabilities assumed by him as herein before mentioned; that he, this respondent, has not reduced in any way his indebtedness to the said Day, although he has paid to said Day, from the proceeds of the store, the sum of ten thousand six hundred and seventy dollars, but the said Day has paid more than that amount, in addition to the sums herein above mentioned, for goods, &c.

And this respondent further saith, that the household furniture, &c. is unsold, and is worth about four hundred dollars; that the stock of
groceries, &c. have been sold, and replaced constantly by
400. this respondent, who carries on the business for the said
Day at his wish and for his benefit; that the steamboat
Factor was sold under a decree of the admiralty court, and did not bring the amount of the decree, wherefore nothing was realized from her; the slave Minta and child, the barouche and one horse was sold,
and the money applied by the direction of said Day to the
$840. purchase of goods for the store; the amount of said sales
Pd. Day. were eight hundred and forty dollars. The other horse is
still employed doing work for the store.

And this respondent further saith, that the notes held by said complainant were both dated prior to the said assignment to Day.

And this respondent denies all fraud and combination; and now, having fully answered all the allegations in said bill contained, he prays to be hence dismissed with his costs.

GORDON & OGDEN,
For respondents.

STATE OF ALABAMA,
Mobile county.

Personally appeared before me John Ticknor, who being duly sworn, on oath saith, that the matters set forth in the above answer as of his own knowledge are true, and as to those stated to be to the best of his knowledge and belief, he believes them to be true.

JOHN TICKNOR.

Sworn to and subscribed before me, this 1st day of April, A. D. 1843.

M. J. McRAE, *Reg'r.*

B.

1840.			
April 28.	Store and lot on St. Francis street		$20,000
"	By amount of merchandise and available accounts &c.		1,150
"	Negress Minta and child	$450 00	
"	Furniture in house and kitchen	800 00	
"	Horse and carriage	250 00	
			1,500
"	Amount of interest in steamboat Factor		12,000

Exhibit C.

List of notes, &c., held by John Ticknor.

Gayle & Vandergrass, receipt dated July 2, 1836, per Brothers & Goodman, guarantee of Lynn Scoble's note for	$2,000 00
H. A. Slad's note	650 00
Willard, Freeman & Co., note	375 00
S. V. V. Schriglus, note	700 00
Walsh & Fitzpatrick's note	1,015 84
" " "	936 85
Goodman & Mitty's note	1,738 79
" " & Co's note	3,575 25
" " " "	1,769 51
" " " "	1,892 29
Williams & Howard	4,000 00
Andrew Armstrong	1,300 00
M. James	144 50
J. M. Cooper	146 11
J. H. O'Neall	280 90
Hobbs & Hayden	1,635 96
Hobbs & Hayden	741 82
J. G. Lindsey	1,849 32
H. Kinny	1,600 00
C. Cutney, note	4,666 66
	$31,018 70

Filed April 1st, 1843.

M. J. McRAE, *Reg'r.*

Notice of motion for receiver.

JOSEPH WISWALL vs. JAMES TICKNOR and James L. Day. } In chancery.

MOBILE, *April* 4, 1843.

Please to take notice, that I will move for an order referring it to the master to appoint a receiver in the above case, pursuant to the prayer of the bill, so soon as said case shall be called in its order or counsel can be heard, and that defendant deliver to such receiver his property and effects on oath.

K. B. SEWALL,
Complainant's sol'r.

To GORDON & OGDEN, esq.,
Solicitors for defendant.

Acceptance of service.

We accept service of the within notice April 5, '43.
GORDON & OGDEN.

Order dissolving injunction, &c.

At a term of the court of chancery for the first district of the southern chancery division of the State of Alabama, begun and held at Mobile on the first Monday of April, 1843, on the 11th day of April, 1843, the same being a day of said term, the honorable Anderson Crenshaw presiding, the following orders were made and entered in this cause, to wit:

JOSEPH WISWALL, complainant, vs. TICKNOR & DAY defendants. }

In this cause the complainant moves for the appointment of a receiver, and the defendant moves to dissolve the injunction. In disposing of these motions, it is the duty of the court to look into the answers as well as the matter of the bill, and if the answers deny the equity of the bill, or deny that there are funds or property on which the equitable right of the complainant can attach, or show that the funds in question are not liable to the complainant's demand, and there are no affidavits to support the allegations of the bill against the denials and matter of the answers, then I hold that a receiver ought not to be appointed, and that for the same reason the injunction ought to be dissolved.

I cannot assent to the doctrine as laid down by the Chancellor of New York, that it is regular to appoint a receiver whether there be funds or property, or not, on which the equitable right of the complainant could attach.

If this be the law, then it would be proper for this court to give a nugatory order in appointing a receiver where there are no funds or property; and this is what the law never contemplates.

I think it should appear that there are funds or property liable in equity to the complainants, and then they are in danger of being lost or wasted, unless placed in the hands of a receiver.

In the present case, the answers deny the existence of such funds or property, or that the funds and property in the possession of Ticknor, and which he assigned to Day as a security for certain debts and liabilities, are subject to the complainant's demand, there is nothing on the face of the deed of assignment presumptive of fraud in its execution, and the answers deny the circumstances of fraud charged in the bill, and further declare, that it was executed in good faith and for a sufficient consideration, as set forth in said deed of assignment, and in substance that it was not intended to defraud, hinder, or delay the complainant in the collection of his debt, or any of the creditors of Ticknor.

The circumstance that Ticknor was left in possession of the property is no badge of fraud in the present case, inasmuch as this was a provision of the deed, and is entirely consistent with the deed.

In the absence of counteracting affidavits to destroy the effect of the answers, I am of opinion that the motion to appoint a receiver ought to be overruled and the injunction be dissolved.

And it is accordingly ordered, that the motion to appoint a receiver be dismissed with costs, and that the injunction be dissolved also with costs.

Signed, CRENSHAW, *Chancellor*.

Appeal.

And on Saturday, the 15th day of April, A. D. 1843, the same being another day of said last named term, the following order was made in this cause, to wit:

JOSEPH WISWALL, complainant,
vs.
TICKNOR AND DAY, defendants.

This was a motion for an appeal from the order of the chancellor made in this cause, dissolving the injunction and overruling the motion for the appointment of a receiver. The appeal is allowed, upon the complainant entering into bond, to be approved by the register, in the sum of five hundred dollars.

Certificate of reversal.

The State of Alabama, to the register of the chancery court of Mobile county, greeting:

It is hereby certified, that the record and proceedings of said court, in a certain action, Wiswall complainant, and Day and Ticknor defendants, wherein by said court, at spring term, 1843, it was ordered, that the motion to appoint a receiver be dismissed with costs, and that the injunction be dissolved also with costs, being brought before our supreme court by appeal allowed by the said chancery court, on the 15th day of April, 1843, on behalf of said Joseph Wiswall, plaintiff in

Notice of motion for receiver.

Joseph Wiswall }
vs. } In chancery.
James Ticknor and James L. Day. }

Mobile, *April* 4, 1843.

Please to take notice, that I will move for an order referring it to the master to appoint a receiver in the above case, pursuant to the prayer of the bill, so soon as said case shall be called in its order or counsel can be heard, and that defendant deliver to such receiver his property and effects on oath.

K. B. SEWALL,
Complainant's sol'r.

To Gordon & Ogden, esq.,
Solicitors for defendant.

Acceptance of service.

We accept service of the within notice April 5, '43.

GORDON & OGDEN.

Order dissolving injunction, &c.

At a term of the court of chancery for the first district of the southern chancery division of the State of Alabama, begun and held at Mobile on the first Monday of April, 1843, on the 11th day of April, 1843, the same being a day of said term, the honorable Anderson Crenshaw presiding, the following orders were made and entered in this cause, to wit:

Joseph Wiswall, complainant, }
vs. }
Ticknor & Day defendants. }

In this cause the complainant moves for the appointment of a receiver, and the defendant moves to dissolve the injunction. In disposing of these motions, it is the duty of the court to look into the answers as well as the matter of the bill, and if the answers deny the equity of the bill, or deny that there are funds or property on which the equitable right of the complainant can attach, or show that the funds in question are not liable to the complainant's demand, and there are no affidavits to support the allegations of the bill against the denials and matter of the answers, then I hold that a receiver ought not to be appointed, and that for the same reason the injunction ought to be dissolved.

I cannot assent to the doctrine as laid down by the Chancellor of New York, that it is regular to appoint a receiver whether there be funds or property, or not, on which the equitable right of the complainant could attach.

If this be the law, then it would be proper for this court to give a nugatory order in appointing a receiver where there are no funds or property; and this is what the law never contemplates.

I think it should appear that there are funds or property liable in equity to the complainants, and then they are in danger of being lost or wasted, unless placed in the hands of a receiver.

In the present case, the answers deny the existence of such funds or property, or that the funds and property in the possession of Ticknor, and which he assigned to Day as a security for certain debts and liabilities, are subject to the complainant's demand, there is nothing on the face of the deed of assignment presumptive of fraud in its execution, and the answers deny the circumstances of fraud charged in the bill, and further declare, that it was executed in good faith and for a sufficient consideration, as set forth in said deed of assignment, and in substance that it was not intended to defraud, hinder, or delay the complainant in the collection of his debt, or any of the creditors of Ticknor.

The circumstance that Ticknor was left in possession of the property is no badge of fraud in the present case, inasmuch as this was a provision of the deed, and is entirely consistent with the deed.

In the absence of counteracting affidavits to destroy the effect of the answers, I am of opinion that the motion to appoint a receiver ought to be overruled and the injunction be dissolved.

And it is accordingly ordered, that the motion to appoint a receiver be dismissed with costs, and that the injunction be dissolved also with costs.

Signed, CRENSHAW, *Chancellor.*

Appeal.

And on Saturday, the 15th day of April, A. D. 1843, the same being another day of said last named term, the following order was made in this cause, to wit:

JOSEPH WISWALL, complainant,
vs.
TICKNOR AND DAY, defendants.

This was a motion for an appeal from the order of the chancellor made in this cause, dissolving the injunction and overruling the motion for the appointment of a receiver. The appeal is allowed, upon the complainant entering into bond, to be approved by the register, in the sum of five hundred dollars.

Certificate of reversal.

The State of Alabama, to the register of the chancery court of Mobile county, greeting:

It is hereby certified, that the record and proceedings of said court, in a certain action, Wiswall complainant, and Day and Ticknor defendants, wherein by said court, at spring term, 1843, it was ordered, that the motion to appoint a receiver be dismissed with costs, and that the injunction be dissolved also with costs, being brought before our supreme court by appeal allowed by the said chancery court, on the 15th day of April, 1843, on behalf of said Joseph Wiswall, plaintiff in error. It was thereupon, by our supreme court, on the 9th day of April, 1844, considered, that said order of said chancery court be in all things reversed, annulled, and held for naught; and that said plaintiff in error recover against said defendants in error the costs accruing in said cause in said supreme court, and that said cause be remanded to said chancery court for further proceedings.

Witness James B. Wallace, clerk of the supreme court, the 10th day of April, 1844.

JAMES B. WALLACE, *Clerk.*

Decree.

WISWALL }
vs. }
TICKNOR AND DAY. }

Decree—In chancery, April term, 1845.

This cause was submitted for a decree on the bill, answers, and exhibits. The supreme court having declared that the conveyance of his property from the defendant Ticknor to Day was fraudulent and void as against the complainant, who is a judgment creditor, it merely remains for this court to carry out the principles of that decision.

It is therefore adjudged, ordered, and decreed, that it be referred to the master to see how much is due the complainant on his said judgment in the pleadings mentioned, and that he take an account of all the property and estate of said Ticknor embraced in the said deed of conveyance, and of all the equitable rights, effects, and things in action, belonging to said Ticknor, and an account of the rent of the store premises on St. Francis street, and which may have accrued from the time of filing the bill in the present case. In taking the account, the master will examine the parties on oath as occasion may require, and call for the production of all necessary books and writings which may be in their power or possession, and he will make to the parties all just allowances.

And it is further ordered and decreed, that the master appoint a proper and suitable person to be receiver, and who is required to give a sufficient bond with security before the master for the faithful performance of his duties, and duly to account and pay what he shall receive. And that the defendants assign, transfer, and deliver on oath to the receiver, thus to be appointed under the direction of the master, all the property and estate of said Tignor, embraced in said deed, and all the equitable effects and evidences of equitable rights and choses in action, belonging to said Ticknor; and that he also deliver to the receiver possession of the store premises on St. Francis street, and which is admitted to be in the defendants' possession. And the receiver is empowered and required to collect and receive all the said personal property and equitable effects and choses in action, and to sue for the same if necessary, and to sell under the direction of the master all the personal estate and effects, and to apply all the money which he may collect or receive towards payment of the complainant's debt and costs. And if the personal property and effects shall not be sufficient to satisfy the complainant's debt and cost, then, under the direction of the master, the receiver sell the land and store premises, situate on St. Francis street, and described in the pleadings; and if there be a surplus after satisfying the debt and costs, that the receiver retain the same until further direction. And it is declared and decreed, that the said deed of conveyance from Ticknor to Day, and which is described and set out in the bill, is fraudulent and void, and set aside as against the complainant.

CRENSHAW, *Chancellor.*

Read 15th April, 1845.

Appointment of receiver.

THE STATE OF ALABAMA, *Mobile county.*

To Moses Waring, esq., greeting.

Know ye, that by virtue of the authority in me vested by a certain decree rendered in our chancery court, for the first district of the southern chancery division of said State at Mobile, in a certain cause pending in said court, wherein Joseph Wiswall was complainant, and John Ticknor and James L. Day were defendants, it was among other things decreed at the April term, 1845, of said court, that the master appoint a proper and suitable person to be receiver, who is to give bond with security before the master for the faithful performance of his duties, and duly account and pay what he shall secure, &c. Now, therefore, I do by these presents appoint you receiver under the decree aforesaid, and you are hereby authorized to enter upon the discharge of the duties of receiver under the decree aforesaid, so soon as you shall have executed a sufficient bond as required by said decree.

In testimony whereof I have hereunto set my hand and affixed my seal of office, this 27th day of June, 1845.

Attest: M. J. McREA, *Register.*

I hereby certify that Moses Waring has filed a sufficient bond as required by the decree. Witness my hand and seal of office, this 27th day of June, A. D. 1845.

M. J. McRAE, *Reg.*

Bond of receiver.

THE STATE OF ALABAMA, *Mobile county.*

Know all men by these presents that we, Moses Waring, William Magee, and Samuel W. Allen, are held and firmly bound unto Malcolm J. McRae, register of the chancery court for the first district of the southern chancery division of said State, at Mobile, and his successors in office, in the just and full sum of eight thousand dollars; for the faithful payment of which, well and truly to be made, we bind ourselves and each of us, and our heirs and each of them, firmly by these presents. Sealed with our seals and dated this 27th day of June, 1845. The condition of this obligation is such, that whereas at the April term, 1845, of the court of chancery aforesaid, a decree was rendered in the case of Joseph Wiswall, complainant, against John Ticknor and James L. Day, defendants, whereby it was ordered and decreed, that the master appoint a proper and suitable person to be receiver under said decree, and who is required to give a sufficient bond with security before the master for the faithful performance of his duties, &c; and whereas in pursuance of the said decree the master has appointed, on this day, the above bound Moses Waring as receiver aforesaid:

Now, therefore, if said Moses Waring shall in all things discharge the duties of his said office of receiver, according to the requirements, intent, and meaning of said decree, then this obligation shall be void, otherwise to be and remain in full force, virtue, and effect.

MOSES WARING, [SEAL.]
WM. MAGEE, [SEAL.]
S. M. ALLEN. [SEAL.]

In presence of—K. B. SEWALL.

Attornment of Ticknor, to receiver.

I admit service of a copy of the decree, made on the part of Joseph Wiswall vs. John Ticknor and James L. Day, in the Mobile chancery court, spring term, 1845, and of the order and certificate, appointing Moses Waring receiver, *are* now, in pursuance of said decree, and I hereby attorn and become the tenant of said receiver, of the land and premises mentioned in said decree, until the further order of the court in the premises, or my tenancy, otherwise leases. Witness my hand and seal, at Mobile, the twenty-seventh day of June, 1845.

JOHN TICKNOR. [SEAL.]

Writ of error.

The State of Alabama, to the register in chancery, at Mobile, greeting:

Whereas it is represented, in the record and proceedings of a cause tried and determined at a term of the court of chancery for the first district of the southern chancery division of said State at Mobile, begun and held on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-five, wherein Joseph Wiswall was complainant, and John Ticknor and James L. Day were defendants, manifest error hath intervened to the damage of the said defendants. Therefore we command you to send, certified under your hand and official seal, a transcript of the record in said cause, to the judges of our supreme court at a term thereof, to be holden on the first Monday of June next; if error there be, the same be corrected. Witness Malcolm J. McRae, register of our said court of chancery, at office, this 19th day of May, in the year of our Lord one thousand eight hundred and forty-five, and of American independence the sixty-ninth year. Issued 19th day of May, A. D. 1845.

Attest: M. J. McRAE,
Reg. 1*st dist. so. ch'y div., Ala., at Mobile.*

Certificate of affirmance.

The State of Alabama, to the register of the chancery court of Mobile county, greeting:

Whereas the record and proceedings of said court in a certain action by English Bill, wherein by said court, at spring term, 1845, it was decreed that he take an account of the estate of John Ticknor, embraced in a deed of conveyance to James L. Day, mentioned in the bill of complaint exhibited by Joseph Wiswall, against said Ticknor and Day, and an account of the rent of the store and premises on St. Francis street, that he appoint a receiver, and that said defendants deliver, on oath, to such receiver, the estate of said Ticknor, embraced in said deed, and to sell the personal estate and effects, and apply the money towards payment of complainant's debt and costs, and to sell the land and premises on St. Francis street; and if there be a surplus, after paying the debt and costs, that he retain the same until the further order of the court; that said deed from Ticknor to Day, set out in the bill, is fraudulent and void, &c.; were brought before our supreme court by writ of error, issued by the register of said chancery court, on the 19th day of May, 1845, on behalf of said Ticknor and Day. Now, it is hereby certified, that it was thereupon, by our supreme court, on the 6th day of January, 1846, considered that said decree of said chancery court be affirmed, and that said defendant in error recover against said plaintiff in error and against security, for the prosecution of said writ of error, the amount of said judgment of said court, ten per cent. damages thereon and interest, and the costs in said cause accruing in said supreme court and in said court below. Witness James B. Wallace, clerk of said supreme court, the day of 184

Register's report of appointment of receiver.

JOSEPH WISWALL, complainant,
vs. } In chancery.
TICKNOR & DAY, defendants.

The undersigned, register in chancery for the first district of the southern chancery division of said State, makes report to the said court, that in conformity to a decree rendered at the April term, 1845, of said court, in the above entitled cause, directing him to appoint a receiver, to be let into possession of the premises and property, the matter of dispute, that he appointed, on the 27th day of June, 1845, Moses Waring receiver, and that the said Waring executed a bond, which was approved by him, and entered into the discharge of the duties of his office. All of which is respectfully submitted, 1st December, 1846.

M. J. McRAE, *Register.*

JOSEPH WISWALL, complainant,
vs.
JOHN TICKNOR & JAMES L. DAY, def'ts.

The register, to whom this cause was referred by decree of this honorable court, pronounced at the April term, 1845, and affirmed by the supreme court, reports that he notified the parties, by their solicitors, of the time and place of making up the report on the matters referred; and the parties appearing by counsel, he proceeded to take the testimony necessary to a statement of the acct. and a determination of the matters referred, and finds due the complainant—

For principal on the 14th June, 1842	$2,233 17
Interest to the 4th June, 1843	173 40
Costs of suit paid by plaintiff	27 56
	2,434 13
Upon which there should be a credit, on 4th June, 1843, made on a garnishment of Rives, Battle & Co.	760 25
Leaving due on 4th June, 1843	1,673 88
With interest to 1st March, 1847, a period of 3 years 8 months and 26 days, is	500 95
Leaving a balance due the plaintiff of	$2,174 83

The register further reports, that the only real estate embraced in the deed from Ticknor to Day, of 28th April, 1840, and set out in the bill, and not exhausted by prior liens, is the store and lot on the north side of St. Francis street, between Commerce and Water streets, extending through to Planters' street.

That the value of the stock of goods in the store on St Francis street, embraced in said deed at the time of its date, was about eleven thousand five hundred dollars. That the same was disposed of by the defendants to the bill, together with the other personal property described in said bill, prior to the filing of the same, with the exception of some furniture, and a large amount of old debts, notes, and book accounts, which are of no great value.

That Ticknor was indebted to Day in a large sum of money, say ten thousand dollars, before the filing of said bill, and from that date no property of said Ticknor has [he] had in his hands.

The register further reports, that the value of the rent of the store on St. Francis street, from the time of filing said bill, would have been worth about an average rent of twelve hundred dollars per annum, but that they have fallen, and the last year was worth about $1,000.

It is also reported that said Ticknor has, upon his examination under oath, disclosed and handed over the following choses in action.

No. 1. John C. Neall's note, dated February 10th, 1836, at 12 months, in favor Jno. Ticknor & Co., for - $280 90

No. 2.	W. J. Bettis' note, dated April 9th, 1836, at 60 days, in favor J. Ticknor & Co.	$92 58
No. 3.	Hobbs & Hayden, draft dated 1st January, 1837, at twenty-seven months, to own order, payable to Bank of Mobile.	
	Cr. by $100, paid 4 April, 1839; also paid 12 July, $400.	
No. 4.	Hobbs & Hayden, draft dated January 1, 1837.	
No. 5.	Hobbs & Hayden, draft dated 1st January, 1837, at 30 months after date	741 82
No. 6.	R. P. Richards, note dated 1st January, 1837	82 60
No. 7.	John C. McCraney & Co., note dated 1 July, 1833, ten days after date	97 99
No. 8.	Walsh & Fitzpatrick, note dated Mobile, February 16, 1837, at 60 days, to order of J. Ticknor	936 75
No. 9.	Stephen G. Field's note, dated Mobile, June 1st, 1841, forty days, in favor of John Ticknor, for	137 00
No. 10.	Henderson Kinney's note (see No. 25) is the same.	
No. 11.	John McCraney & Co., note dated Canton, September 26th, 1832, 60 days	103 08
	Cr. May 27, 1835, with $55 00.	
No. 12.	S. M. Watson, dated January 9, 1833, fifteen days in favor of John Ticknor, and bill on J. B. Slade, and acceptance Jas. B. Slade	34 00
No. 13.	W. E. Norwood, dated Dallas, August 8, '33, due 1st day January next, for Ticknor, and bill	165 45
No. 14.	John M. Cooper, Mobile, January 7, 1839, 10 days, in favor of John Ticknor	146 11
No. 15.	W. E. Norwood, Dallas county, 8 days, 1833, due January next	165 45
No. 16.	Stephen G. Field, Mobile, 1st May, 1841, forty-five days, in favor of John Ticknor	339 96
No. 17.	Andrew Armstrong, Mobile, 25 July, 1840, sixty days, in favor of J. Ticknor	1,300 00
No. 18.	Croaker & Watson, Mobile, February 7, 1842, 90 days, to order, at Bank of Mobile, for	281 19
No. 19.	H. N. Croaker, Mobile, 5th February, 1842, seventy days—same	294 01
No. 20.	E. R. James, Pensacola, 11 October, 1837, due 8th day of February, 1838, favor Goodman, Miller & Co., payable at Bank of Mobile	495 18
No. 21.	Croaker & Watson, Mobile, February 7, 1842, thirty days	281 19
	Cr. March 18, 1842, for $100 00.	
No. 22.	Croaker & Watson, Mobile, February 7, 1842, four mos.	281 19

No. 23.	R. Sims, Mobile, February 24, 1835, sixty days, order J. Ticknor & Co.	$88 78
No. 24.	Benjamin Pearson, note, Mobile, 1 May, 1841, one day, for J. Ticknor	1,256 42
No. 25.	Henderson Kennedy, Mobile, July 13, 1840, sixty days, for John Ticknor	201 80
No. 26.	Goodman, Miller & Co., Mobile, March 6, 1837, ninety days, for John Ticknor	3,575 25
No. 27.	Goodman & Miller, Mobile, April 22, 1836, 12 months, for John Ticknor [&] Co.	1,738 79
No. 28.	Duke Goodman, Mobile, September 1, 1840, six months, for John Ticknor	1,892 29
No. 29.	Duke Goodman, Mobile, September 1, 1840, one day, do.	1,769 51
No. 30.	Walsh & Fitzpatrick, Montgomery, January 5, 1837, sixty days, favor Smith & Hayden	1,015 84
No. 31.	John A. Torbut, Mobile, January 21, 1834, due 15 days January next, 1835	217 77
No. 32.	William Kitchen, Mobile, 23d July, 1841, ninety days, order	1,068 28
No. 33.	Willard Freeman & Co., Mobile, 31 December, 1836, four months	375 00
No. 34.	J. Kaugry, Mobile, January 3, 1840, one day after date, favor J. Ticknor	119 02
No. 35.	William Gibson, Mobile, January 1, 1841, one day after date, favor J. Ticknor	123 75
No. 36.	Mosely Hooker, dated May 12, 1836	90 95
No. 37.	William Jencks, Mobile, March 30, 1835, ninety days	20 67
No. 38.	William Martin, Mobile, February 26, 1831, 90 days, for Ticknor & Bill	176 91
No. 39.	J. C. Ayers, Mobile, January 2, 1841, 2d day January, 1842, in favor John Ticknor	735 67
No. 40.	Oliver Reed, Mobile, 14 May, 1836, five months, in favor J. Ticknor & Co.	331 89
No. 41.	B. R. Mobley & Co., New York, 2d November, 1829, four months, order of H. King	418 18
No. 42.	Daniel Rain, Mobile, January 24, 1843, one day, in favor John Ticknor & Co.	219 69
No. 43.	Edgesly & Masseney, Erie, Greene county, June 22, 1835, due 1 December following	490 00
No. 44.	O. S. Noyes, and protest, Mobile, January 27th, 1842, sixty days	650 00
No. 45.	Jas. G. Lindsay, second of ex., dated July 25, 1838, in favor Waid, Taylor & Co.	1,849 32
No. 46.	H. & A. Slade, Mobile, 12 July, 1837, due 10 days, November, 1837, (note)	650 00
No. 47.	Duke Goodman, due bill, March 29, 1839	500 00

No. 48.	Geo. Vertch, Mobile, May 1, 1832, (note) thirty days	$67 51
No. 49.	Joseph Caywood, Mobile, October 15, 1840, due bill	43 00
No. 50.	Joseph C. Smith, due bill, Mobile, December 3, 1839	133 69
No. 51.	S. W. Schuyler, due bill, July 12, 1837	700 00
No. 52.	Geo. W. Vankleck, due bill, May 9, 1837	100 00
No. 53.	M. James, due bill, December 28, 1839	144 50
No. 54.	M. Sturgess, due bill, January 9, 1841	300 00
No. 55.	John Ticknor's first of exchange, and protest on T. W. Nibb's, dated Mobile, Jan. 27, 1834	704 69
	Gayle & Vandegraff's receipt for a guarantee of Brothers & Goodman, dated 2d July, 1836, for the payment of L. Scovill's note, dated 15–18 January, 1837, for	2,000 00
	Receipt Gayle, Vandegraff & Saffold, for Willim Wallace's note, dated 7 May, 1836	5,575 68
	Gibbons & Fisher's receipt for Henderson Kinney's note, dated 16 August, 1839, and due in six months	808 64
	R. Lee Fear's receipt for two notes, and an account on the estate of G. W. Brown, one note for $1,058 79, one note for $210 00, account for $437 33	1,706 52

The following certificates of stock in the city of Galveston, numbers 167, 168, 169, 170, 171, book D, dated 10th Feb'ry, 1839, signed by Levi Jones and Thomas Gunn, trustees:

One bank bill on the Wetumpka Trading Company, A, No. 228, for	$20 00
Ditto A, No. 582, for	3 00
Ditto A, No. 200, for	5 00
Bank bill of Real Estate Banking Company, Columbus, Miss., D, No. 168	20 00
Mississippi and Alabama Railroad Co., letter B, 327	20 00
The Commercial Bank of Florida, letter B, No. 99	5 00
Mississippi and Alabama Railroad Co., letter D, No. 1,490	5 00
The Merchants' Change Association, No. 629	2 00

HARTMAN & WILEY, *Endorsees.*

Which *has* been delivered over to the receiver appointed by decree of this honorable [court.]

Also a note of W. H. Pendarris, dated 24th August, 1840, and due 15th February, 1841, and payable to his own order, for the sum of	$494 50
Also the receipt of John F. Clarke, for money borrowed in New York of John Ticknor, 27th Oct., 1842, for	43 00

Which claims are worthless. All of which is submitted, 1st March, 1847.

M. J. McREA, *Reg.*

Confirmed 9th April, 1847.

Receiver's report.

JOSEPH WISWALL, complainant,
vs.
JOHN TICKNOR & JAMES L. DAY, defendants,
and
The PRESIDENT, DIRECTORS and COMPANY of the Bank of Mobile, James Stewart, and Henry Lazarus, complainants,
vs.
The same defendants.

In chancery, first chancery district of Alabama.

Moses Waring, the receiver appointed in the above entitled cases, reports, that, in pursuance of the decrees made in these causes, and under the direction of the register of this court, he did, on the first Monday of March, 1847, offer for sale, at public auction, in front of the court-house of Mobile county, within the usual hours of sheriff's sales, after having given ten days public notice thereof, by publication in the Mobile Daily Advertiser, a newspaper published in Mobile, all the personal property and choses in action of the above named John Ticknor, which have come into his possession as such receiver, and which are particularly set forth in the schedule hereto annexed, marked A.

At which sale a part of said personal effects were struck off to William Kitchen, for the sum of - - - - -	$750 00
That being the highest price bid for the same; and the remainder of all said personal effects were struck off to A. L. Hayden, for - - - - - -	75 00
That being the highest sum bid for the same; the whole proceeds of the sale of the said personal effects being eight hundred and twenty-five dollars - - -	825 00
And he further reports, that afterwards, on the same day, at the same place, and within the usual hours of sheriff's sales, he, as such receiver, did, under the direction of the said register, further offer at public sale the store and lot of land situate on the north side of St. Francis street, in the said decree referred to, after having first given thirty days public notice of the time and place of said intended sale, with a description of the said lot and premises, by publication in the said Mobile Daily Advertiser; at which sale the said lot and premises were struck off to Kiah B. Sewall, for the sum of six thousand five hundred dollars	6,500 00

He being the highest bidder, and that being the highest sum bid for the same; the said Sewall being present at said sale as the attorney of the above named complainants, and making said bid with their assent, and on their be-

half and account; that the total proceeds of the sales of the personal and real estate aforesaid amount to seven thousand three hundred and twenty-five dollars		$7,325 00
And the said receiver further reports, that the proceeds of said sales have been applied, under the direction of the register, and in pursuance of the above named decrees, as follows, to wit:		
To the register in chancery, the amount of costs in the above cases as taxed, four hundred and fifty-three $\frac{36}{100}$ dollars	$453 36	
To the Mobile Daily Advertiser, for advertising notices of said sales	126 00	
To the receiver, retained by him for his commissions	365 25	
To James Wiswall, the amount of his debt, as reported in full, two thousand one hundred and seventy-four $\frac{83}{100}$ dollars	2,174 83	
		3,119 44
Which leaves the sum of four thousand two hundred and five dollars and fifty-six cents		$4,205 56
to be applied to the complainants in the last above entitled suit.		
And will pay the amount reported due to the complainant, James Stewart, in full		$723 77
To Henry Lazarus, his debt also in full, to wit		904 12
And to the President, Directors & Company of the Bank of Mobile, the sum of		2,577 67
		$4,205 56

Leaving a balance of six hundred and fifty-two dollars and three cents of the debt due the Bank of Mobile, as reported, still due and unpaid.

And he further reports, that, on the twenty-seventh day of June, 1845, the said defendant, John Ticknor, being duly served with a copy of the decree made in the said suit of Joseph Wiswall vs. Ticknor & Day, and of the order and certificate appointing the said receiver, did then attorn and become the tenant of this receiver, by writing, under his hand and seal, a copy of which is hereto annexed, marked T; that from the time of such attornment to November following, no rent could be obtained for said premises; that since November, 1845, said Ticknor has refused to pay any rent for said premises, or to leave the same, or to yield up the possession to the said receiver, or to the purchaser thereof at the sale aforesaid, though requested so to do; and the receiver asks the direction of the court in the premises.

And he further reports, that he has, under the direction of the master, executed to the purchaser of the said premises on St. Francis street, sold as aforesaid, the usual deed of conveyance in such cases made.

All which is respectfully submitted.

MOSES WARING,
Mobile, April 3d, 1847. *Receiver.*

The register is satisfied that this is a copy of the original report of the receiver in this case, which is mislaid, and is not among the files; and the register files the same in. M. J. McCREA.

Final decree of confirmation, &c.

At a term of the court of chancery, at Mobile aforesaid, begun and held on the first Monday of April, A. D. 1847, on Saturday, the 10th day of April, 1847, the same being a day of said term, the honorable Anderson Crenshaw presiding, the following decree was pronounced in this cause, to wit:

JOSEPH WISWALL, complainant,
vs.
TICKNOR & DAY, defendants.

This cause coming on to be heard for a final decree upon the master's report, and the report of Moses Waring, the receiver appointed in the cause; and the said parties being present, by their solicitors, and it appearing that said reports were read in open court, in the presence of said solicitors more than two days ago, and no exceptions being filed, or objections being made to said reports, or either of them, on motion of complainant's solicitor it is ordered, adjudged, and decreed, that the said reports of the master and receiver, and each of them, be in all things confirmed, and that said reports be filed in the cause.

And it appearing by the said report of the receiver, that the lot of land and premises, situate in St. Francis street, described in the pleadings of this cause, were on the first day of March last sold under the direction of the master of this court, pursuant to an order and decree of this court, made at the April term, eighteen hundred and forty-five, and which was affirmed by the supreme court; at which sale Kiah B. Sewall became the purchaser for the sum of six thousand five hundred dollars, and no exceptions being filed or objections made thereto, and it appearing that the parties have had two days notice thereof, and the said purchaser now appearing and asking confirmation of sale, and to be let into possession of said premises, and no objection being made:

It is therefore ordered, adjudged, and decreed, that the said sale be confirmed, and that the said defendants deliver the possession of said premises sold as aforesaid to the purchaser thereof, and upon their default so to do, and upon service of a copy hereof upon them, that a writ of assistance do issue to the sheriff of Mobile county, to put the said purchaser into possession of said premises forthwith, and that the defendants pay the costs thereof.

CRENSHAW, *Chancellor.*

Exhibit C.

Schedule C, to bill of exceptions.

The answer of James L. Day to the bill of complaint of James Stewart and Henry Lazarus, and the President, Directors, and Company of the Bank of Mobile, filed against him in the court of chancery, at Mobile.

This defendant does not know, nor is he informed, except by the complainant's bill, of the debts claimed to be held by them against John Ticknor. Nor does he know, nor has he any information of the proceedings that have been taken for their recovery, and cannot answer in regard to them.

This defendant says he has not information, and cannot answer from belief or otherwise, of any property in the hands of the said John Ticknor, nor of any acts of concealment committed by him, nor of efforts to secure the property from his creditors.

This deponent further answering admits, that a deed, such as is specified in the plaintiff's bill, was made by the said John Ticknor in favor of this defendant.

This defendant states that he was a bona fide creditor of the said Ticknor at the date of the said deed, and has continued so from thence till this time, for moneys advanced to, and moneys collected by said Ticknor. That the said Ticknor still owes on account of the said advances above ten thousand dollars, over and above all offsets and discounts that he is fairly entitled to. That this defendant did hope to be reimbursed the same from the property specified in the said deed. That he has been informed that under the decision of the supreme court, that the said deed cannot be retained; he therefore abandons all claim to the property specified therein. That long before the filing of the said bill, most of the property had been disposed of, and none of it is held by this deponent under the same.

This deponent states that he claims one of the slaves mentioned therein, Ramsey, by a sale independent of the said deed, but that under the deed he has no interest.

This deponent further on swearing says, that the store-house, groceries, slaves, and other articles were left with the said Ticknor to be managed and disposed of. That this defendant left the same for said Ticknor, and that no control has been exercised by this defendant. That he cannot pretend to answer what he has done with the same.

Further answering this deponent says, that said Ticknor has no interest in the steamboats Creole, Fashion, or James L. Day, and never has had. That he has acted as agent in procuring freight, buying wood, and doing other acts needful for said boats on shore, in securing and landing their freight; but that he has had no concern in the boats in any manner or form, and no share in their profits or losses, but has received a distinct and independent compensation.

Further answering this defendant saith, that he is entirely willing that all the property that the said Ticknor has under the said deed of trust, and all the property and rights of property, either in possession or action mentioned therein, may be appropriated by the court, freed, and discharged from any claim of this defendant. That this defendant claims to have, on a full and fair settlement with the said Ticknor, a claim for a very large amount of money growing out of two actions aforesaid, and he claims that for all these moneys received from Ticknor that he is not entitled to make any account, but that he is authorized to apply them in liquidation and settlement.

This defendant further states, that whatever may have been the legal effect of any transactions mentioned in the said bill, that he had no design to hinder or to delay any of Ticknor's creditors. That he intended to commit no fraud in any particular; and prays to be discharged from the payment of any portion of the costs.

CAMPBELL & CHANDLER,
For Defendant.

Before me, a justice of the peace, for Mobile county, came James L. Day, who maketh oath and saith, that the foregoing answer is true in substance and matter of fact. JAMES L. DAY.

Sworn to and subscribed before me, 5th April, 1845.
S. T. DOUGLASS, *J. P.*

Filed November 3d, 1845.
M. J. McRAE, *Register.*

THE BANK OF MOBILE et al.
vs.
TICKNOR AND DAY.

April term, 1846.

This cause coming on to be heard upon the bill and exhibits, the answer of Day, a decree pro confesso against Ticknor, and the proofs, and counsel being heard; it is upon consideration ordered, adjudged, and decreed, that the deed of conveyance made by Ticknor to Day, bearing date the 28th April, 1840, and referred to in the pleadings, is fraudulent and void as to the complainants, and that it be set aside as to them; and it is further ordered and decreed, that it be referred to the master to ascertain how much is due the complainants, respectively, upon the judgments referred to in the bill, and to take an account of all the property and estate embraced in said deed; and also of all the equitable rights and things in action belonging to said Ticknor. In taking the account, the register will examine the parties on oath, as occasion may require, and call for the production of all necessary books and writings relating to the estate, property, and effects which may be in the possession or power of the parties, and that he make to the parties all just allowances.

And it is further ordered and decreed, that the defendants be enjoined from receiving, disposing of, or intermeddling with, any of the estate, property, or effects of said Ticknor, according to the prayer of the bill.

And it is further ordered and decreed, that the receiver appointed in the suit of Joseph Wiswall against these defendants, which is now pending in this court, be extended to this cause; and that such receiver be required to give further security, if the register may deem it necessary, and that such receiver account from time time before the register, and apply, under the direction of the register, after the confirmation of the report, any surplus money received by him, after paying the debt of Joseph Wiswall in the case referred to, towards the payment of complainants' said judgments, in the order of their date, respect*fully;* and if there be any surplus after paying all said debts in full, the said receiver is required to retain the same till the further order of this court.

And it is further decreed, that the defendant Day account for all the property or proceeds of the property embraced in said deed, received, controlled, or disposed of by him or under his directions, and that the defendants pay the cost of this suit, and that in this accounting the register make to the parties all just allowances.

Read April 11, 1846. CRENSHAW, *Chancellor.*

THE PRESIDENT Directors, and Company of Bank Mobile et al., complainants,
vs.
JOHN TICKNOR and James L. Day, defendants. } In chancery.

1st district, southern division, Alabama.

The register, to whom this came, was referred by decree of this court to report and state the accounts between the parties under the decree pronounced at the April term, 1846, of said court:

Reports, that the solicitors for the complainants and defendants having had notice of the time and place of making up the accounts, he proceeded to make up his report from the pleadings in the case, and the proof on the same matter in the case pending in said court between Joseph Wiswall, complainant, and the defendants, and finds due as follows:

To the complainant James Stewart a balance on his judgment of - - - - - - - -		$492 68
With interest since 16th March, 1841 - - -		231 99
Making for principal and interest - - - - -		724 67
To the complainant Henry Lazarus on his judgment a balance of - - - -	$619 26	
With interest from 29th April, 1841 -	284 86	
		904 12
To the complainant, the Bank of Mobile, on its judgment the sum of - - - -	2,306 90	
With interest from 7th March, 1842 -	922 80	
		3,229 70
Making due the complainants the sum of - - -		$4,858 49

on the 1st of March 1847, for principal and interest.

The register further reports, that the other matters referred have been fully and at large reported on, in the case of Joseph Wiswall, complainant, against the defendants, and he here asks that the said report may be taken and considered as a part of this report, together with the testimony upon which said report was made, and which is on file in said cause of Wiswall against Ticknor & Day. All of which is submitted.

1st March, 1847. M. J. McRAE, *Reg.*
Confirmed April 9, 1847.

Receiver's report. See ante-p.

BANK OF MOBILE et al., complainants,
vs. } In chancery.
TICKNOR & DAY, defendants.

Mobile, April 10, 1847.

This cause coming on to be heard on the report of the master and the report of Moses Waring, the receiver appointed in the cause, and the parties being present by their solicitors, and it appearing that the said reports were read in open court, in the presence of the solicitors of these parties, on the sixth day of April, 1847, a previous day of this term, and more than two days since, and no exceptions being filed, and no objections being made to said reports or either of them, on motion of complainants' solicitors, it is ordered, adjudged, and decreed, that the said reports of the master and receiver, and each of them, be in all things confirmed, and that the said reports be filed, and that the sale of the St. Francis street lot and premises, referred to in said reports, be confirmed. And it is further ordered, adjudged, and decreed, that the defendants deliver possession of the said store and lot of land, situate on St. Francis street, to the purchaser thereof, and that they pay the costs of this suit. CRENSHAW, *Chancellor.*

Exhibit D.—Exhibit D.

In chancery.

STATE OF ALABAMA, *at Mobile.*

EDWARD S. DARGAN, complainant,
vs.
JOSEPH WISWALL, John Ticknor, and Moses
Waring, receiver, defendants.

A transcript of the record and proceedings had on the foregoing stated petition in the court of chancery, for the first district of the southern chancery division of said State, at Mobile.

Petition.—Petition.

To the honorable the chancellor of the southern chancery division:

The petition of Edward S. Dargan respectfully sheweth to your honor, that on the 28th day of December, 1840, Sylvester L. Fowler, Charles Fowler, and William Prout, recovered a judgment against John Ticknor, for the sum of four thousand nine hundred and ninety-one dollars, and the costs of suit in the circuit court of the United States, for the southern district of Alabama. Also, that on the 31st day of December, 1840, Thomas Crouch, Richard Crouch, and Jesse Snead recovered a judgment against John Ticknor, in the same court, for seven thousand one hundred and seventy-six $\frac{25}{100}$ dollars and costs; that executions were duly issued on those judgments within the year of the rendition of the said judgments, and placed in the hands of the marshal of the district for which the court is held, and were duly returned into said court. That on the 1st day of May last a writ of execution was issued on the said judgment first mentioned, and placed in the hands of the marshal of the said district; and on the 17th day of May last an execution was issued on the last mentioned judgment, and placed in the hands of the said marshal. That these executions severally authorized the marshal aforesaid to levy upon the property of the said John Ticknor, for the purpose of making the debt and costs aforesaid, by a public sale of the said property, according to law.

Your petitioner states, that by virtue of the said executions, the property hereinafter described was exposed for sale in the city of Mobile, on Monday, the 7th day of July, 1845, after due and legal notice of the time and place of said sale, at which sale your petitioner became the purchaser for the sum of seven thousand five hundred dollars, and has received a deed from the marshal, conveying all the right of the said Ticknor he was authorized to dispose of under the judgments and process aforesaid. All of which will fully appear by the record and proceedings in the said two causes now in the said court, and the deed of the marshal on record in the county court of Mobile county, in book No. 10, pages 169 and 170; which record, proceedings, and deed, your petitioner begs leave to refer to on the hearing of this petition.

Your petitioner further shows to your honor, that the said property is situated in the city of Mobile, and is bounded by Saint Francis street and Planter's street, and measuring thirty-five feet in front on each of said streets, and bounded east by the store lately the property of Eslava and Rempson; and west, by property of Beach, Ela & Co., and is now occupied by John Ticknor, under Moses Waring, and belonged to said Ticknor at the date of said judgments. Your petitioner states that the said Moses Waring holds the said property under the order of this court appointing him a receiver in the cause now pending in this court, in which Joseph Wiswall is plaintiff, and John Ticknor and James L. Day is defendant.

That the said Joseph Wiswall sets forth in his bill that he is a creditor of John Ticknor, by a judgment rendered in the circuit court of Mobile county, at the spring term, 1842, and that his judgment is for $2,233 $\frac{17}{100}$ dollars and costs of suit. That an execution has issued on the same, and been returned—" no property found." This bill is framed for a discovery of assets of the said Ticknor, and to set aside a deed of said Ticknor to James L. Day, made the 28th day of April, 1840, which is fraudulent as to creditors.

Under this bill a decree has been rendered, setting aside the deed aforesaid, and appointing the receiver aforesaid. All of which will more fully appear by the record of the said case remaining in the said court, and to which your petitioner begs leave to refer.

Your petitioner states, that he has demanded possession of the said property that he has purchased as aforesaid, but finds himself obstructed by the possession of the receiver, under whom the said Ticknor holds.

Your petitioner prays that the said receiver be withdrawn from the said property, and that your petitioner be placed in the possession thereof. And that such other and further relief be granted as may seem proper to your honor, upon the facts herein set forth; and your petitioner will ever pray, &c.

CAMPBELL & CHANDLER, *for Pl'ff.*

Before me, register of the court of chancery, at Mobile, came Edward S. Dargan, who made oath that this petition is true.

E. S. DARGAN.

Sworn to and subscribed before me, 24th November, 1845.

M. J. McRAE, *Reg.*

Filed Nov. 24th, 1845. M. J. McRAE, *Reg.*

Subpœna.—Subpœna.

THE STATE OF ALABAMA, *Mobile county.*

In chancery, first district, southern division.

To Moses Waring, receiver, John Ticknor, and Joseph Wiswall, greeting:

We command you, that within thirty days from the service of this writ of subpœna upon you, you file your answer or demurrer to a petition filed in our chancery court, for the first district of the southern chancery division, against you, defendants, by Edward S. Dargan, complainant; a copy of which petition will be furnished you by the sheriff of the county where you reside, or may be found; and that you appear before the honorable the said court of chancery, to be holden at the court-house of the county of Mobile, on the first Monday of December, A. D. 1845; and that you further [do] and observe what said court shall direct in this behalf, under the pains and penalties prescribed by law in such case made and provided.

[L. S.] Witness M. J. McRae, register of said court, and the seal thereof, at office, this 26th day of November, A. D. 1845.

Attest: M. J. McRAE,
Register 1*st D. S. D.*

To any sheriff of said State, greeting:

We command you, that you execute this process agreeably to law, 127

and have the same, with your return thereon, at our next chancery court, to be held as aforesaid.

[L. S.] Witness my hand and seal of said court, this 26th day of November, A. D. 1845.

Attest: M. J. McRAE, *Register*.

Sheriff's return.—Sheriff's return.

Received 26th November, 1845, and on the 27th November, 1845, I served a copy of the within subpœna, and a copy of the original bill as furnished by the register, on Moses Waring; and on the 1st December, 1845, I served a copy of the within subpœna, and a copy of the original bill as furnished by the register, on John Ticknor and Joseph Wiswall.

C. BANCROFT, *Sheriff M. C.*
By M. J. D. BALDWYN, *Dept. sheriff.*

Answer of Wiswall.—Answer of Wiswall.

In the matter of the petition of Edward S. Dargan, in chancery, Mobile county.

On this 8th December, 1845, before me, Malcolm J. McRae, register in chancery, for the first chancery district, Mobile county, personally appeared Joseph Wiswall, and being duly sworn, in answer to said petition, deposes and says: That, at the sale of the property to Edward S. Dargan, in said petition mentioned, this deponent, by his counsel, was present; and before the sale was made, and after the said land was offered for sale by the marshal, and in presence of the company assembled at said sale, gave notice that a suit was pending in this court in favor of this deponent, against John Ticknor and James L. Day, in which a decree had been rendered in favor of this deponent, directing the appointment of a receiver of the estate of said John Ticknor; in pursuance of which a receiver had been duly appointed, and was in the possession of the land there offered for sale; that this deponent had a lien upon said property, by virtue of his said suit, prior and paramount to that of said judgment creditors; that this notice was distinctly given, and said Dargan bid at said sale with a full knowledge of all the proceedings referred to in this court; and that said property was then in the possession of this court by its duly appointed receiver.

And this deponent further says, that he is informed, and believes it to be true, that John F. Adams represented the judgment of C. S. Fowler & Co., and Edward S. Dargan, the petitioner, represented the judgment of Crouch & Snead; that, before said sale was made, it was agreed by and between said Dargan and Adams, on behalf of their clients, respectively, that the property should be bid in for the benefit of both claims; and that it was, in pursuance of this arrangement, bid off in the name of Edward S. Dargan for the sum mentioned in his petition; and that said Dargan now claims, by virtue of said sale, the property as a trustee for C. S. Fowler & Co. and Crouch & Snead; that no money was paid by said Dargan to the marshal, but that the nett proceeds of said sale was credited on one or both of said judgments; and that said Dargan has and claims no other right or interest in the premises than as above set forth.

This deponent further says, that he has no knowledge of the dates, amounts, or recoveries of the judgments referred to, but he is informed that the persons composing the firm of C. S. Fowler & Co., long before the issuing of the execution referred to, in which said property was sold, had become bankrupts under the Bankrupt act of the United States, and that David A. Hall, of Baltimore or Washington, is their duly appointed assignee in bankruptcy.

And he further says he was, on the 7th of March, 1845, served with a copy of petition, filed in this court by said Hall as such assignee, which is hereto annexed as part of this deposition. And he further says, that he was afterwards informed by his solicitor that said petition was withdrawn by the petitioner before a hearing upon it.

This deponent further says, that he is informed that said judgment of Crouch & Snead was obtained upon a bill of exchange, $5,600, to which Gayle & Bower, Goodman, Miller & Co., Joseph G. Lindsay, Archibald Brown, and John Ticknor were parties; and that judgment was had against Gayle & Bower, Archibald Brown, Joseph G. Lindsay, and John Ticknor; but as to said Brown and Lindsay no executions were ever issued. He is further informed that said Crouch & Snead filed their bill in the United States circuit court for the southern district of Alabama, against said Ticknor and James L. Day, for relief against the deed made by Ticknor to Day, and for satisfaction of their said judgment referred to in this petition; that said suit is still pending and undetermined. All which matters and things this deponent is ready to prove as your honor may require.

And this deponent humbly submits to your honor, whether the said petitioner has in or by his said petition stated such a case as entitles him to any aid or consideration from this court, and he prays that said petition be dismissed, and that this deponent recover his cost in this behalf most wrongfully expended.

JOS. WISWALL.

Subscribed and sworn before me, the day and year above written.

M. J. McRAE, *Reg'r.*

Filed Dec. 8th, 1845.

M. J. McRAE, *Reg'r.*

Answer of Ticknor and Day.—Answer of Ticknor and Day.

The answer of John Ticknor and James L. Day to the petition of Edward S. Dargan, in the court of chancery, at Mobile.

They say they are parties to the suit of Joseph Wiswall. They do not set up any objection to the petition, nor do they consent to it, but refer the subject to the court.

E. LOCKWOOD.
Sol'r. for Ticknor and Day.

Affidavit of Waring.—Affidavit of Waring.

In the matter of the petition of EDWARD S. DARGAN }
vs.
JOSEPH WISWALL et al. }

In chancery, first chancery district, Mobile county.

On this 8th day of December, 1845, before me, M. J. McRae, register of said court of chancery for said district, personally appeared Moses Waring, and being duly sworn, deposes and says, that he was appointed by order of this court receiver in the suit of Joseph Wiswall, therein pending. That as such receiver he acquired possession of the store and lot referred to in said petition by attornment of the tenant to him. That he was present at the sale referred to, and when the sale commenced notice was given by the solicitor of Joseph Wiswall of the claim of said Wiswall against said property, and that said property was then in the possession of the receiver of this court. That after said notice was publicly given, the said property was bid off by John F. Adams, esquire, in the name of Edward S. Dargan; and further he says not.

MOSES WARING.

Subscribed and sworn before me, the day and year above written.

M. J. McRAE, *Reg'r.*

Filed December 9th, 1845.

M. J. McRAE, *Reg'r.*

Affidavit of Sewall.—Affidavit of Sewall.

In the matter of the petition of EDWARD S. DARGAN }
vs.
JOSEPH WISWALL et al. }

In chancery, Mobile fall term, 1845.

On this 9th December, 1845, before me, M. J. McRae, register in chancery for the first chancery district, southern chancery division of the State of Alabama, personally appeared Kiah B. Sewall, and being duly sworn says, that he attended the sale of the premises referred to in said petition, and publicly gave notice of the claim of Joseph Wiswall, as well as of the claim of the Bank of Mobile, James Stewart, and Henry Lazarus, to the property thus offered for sale, as judgment creditors, and by virtue of proceedings instituted by them in this court against Ticknor and Day, and that said premises were then in the possession of the receiver of this court.

And he further saith, that he gave said notice on behalf of said judgment creditors, Wiswall, Bank of Mobile, Stewart, and Lazarus, and the land was bid off in the name of said Dargan, with full knowledge on the part of said purchaser of said claim and possession.

K. B. SEWALL.

Subscribed and sworn before me, the day and year above written.

M. J. McRAE, *Reg'r.*

Filed Dec. 9th, 1845.

M. J. McRAE, *Reg'r.*

Transcript from United States court, No. 1.—Transcript from United States Court, No. 1.

Pleas had before the honorable the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty. Present, his honor John McKinley, presiding judge, and his honor William Crawford, judge of said court.

Be it remembered that heretofore, to wit, on the twentieth day of September, in the year of our Lord one thousand eight hundred and thirty-nine, Sylvester L. Fowler, Charles T. Fowler, and William Prout, sued out of said court their writ of capias ad respondendum against Ticknor in the words and figures following, to wit:

Writ.

United States of America, circuit court of the United States, for the ninth judicial district, southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of John Ticknor, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the fourth Monday of November next, to answer unto Sylvester L. Fowler, Charles S. Fowler, and William Prout, who are citizens of the State of Maryland, in a plea of trespass on the case to their damage eight thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Issued the twentieth September, in the year of our Lord one thousand eight hundred and thirty-nine. DAVID FILES,

Clerk so. dist. Ala.

Cause of action.—Cause of action.

A bill of exchange, (foreign,) dated November 16th, 1838, at sixty days, drawn by John W. Lindsay upon and accepted by Duke Good-

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man, in favor of Joseph G. Lindsay, for four thousand three hundred and twenty dollars, endorsed by said J. G. Lindsay to the defendant, and by him to the plaintiffs, and protested for non-payment.

ADAMS, *pt. Pl'ff.*

Marshal's return.—Marshal's return.

Received September 30th, 1839, and served same day.

ROBT. L. CRAWFORD, *U. S. M.*
By E. C. SOUTHWORTH, *Deputy M.*

And afterwards, to wit, at a term of court begun and held in and for said district of Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs filed in said court the following declarations, to wit:

Declaration.

United States circuit court, ninth judicial circuit, southern district of Alabama, November term, 1839.

Charles S. Fowler, who is a citizen of Maryland, Sylvester L. Fowler, who is a citizen of the State of Louisiana, and William Prout, who is a citizen of the State of Maryland, trading under the firm of C. S. Fowler & Co., plaintiffs, by attorney complain of John Ticknor, who is a citizen of the State of Alabama, defendant, in custody, &c., of a plea of trespass on the case on promises; for that whereas one John W. Lindsay, in parts beyond the State of Alabama, at Washington, in the District of Columbia, to wit, in said southern district of Alabama, heretofore, to wit, on the 16th day of November, in the year eighteen hundred and thirty-eight, made his certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill to Duke Goodman, at Mobile, in said State of Alabama, and thereby then and there requested the said Goodman to pay to Joseph G. Lindsay or order four thousand three hundred and twenty dollars, for value received, sixty days after date, and then and there delivered the said bill of exchange to the said Joseph G. Lindsay; which said bill of exchange the said Duke Goodman, afterward, to wit, on the 30th of said November, at said Mobile, upon sight thereof accepted, and the said Joseph G. Lindsay then and there endorsed and delivered the said bill of exchange to Ward Taylor, who then and there endorsed and delivered the said bill to the defendant, who then and there endorsed and delivered the same to the plaintiffs; and the said Duke Goodman did not pay the said bill, although the same was there presented to him, on the day when it became due, in consequence of which the same was duly protested; of all which the defendant then and there had due notice; by means whereof the said defendant then and there became liable to pay to the said plaintiff the said sum of money, in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested; and being so liable, the said defendant, in consequence thereof, afterwards, to wit, on the first day of February, A. D.

1849, undertook and promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified when thereunto afterwards requested. Nevertheless, the said defendant, not regarding his said promise and undertaking, has not paid the said sum of money or any part thereof to the said plaintiffs, although often requested so to do, but the same to pay has hitherto neglected wholly, and refused and still does neglect and refuse, to the damage of the said plaintiffs eight thousand dollars; wherefore they bring suit.

J. F. ADAMS, *Att'y for plff's.*

And afterwards, to wit, on the 25th day of March, in the year of our Lord one thousand eight hundred and forty, being a day of a term of said court, began and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

C. S. FOWLER & Co.
vs. } 2422.
JOHN TICKNOR.

Non-suit.

This day came the parties by their attorneys; whereupon also came the following jury, to wit: Wm. H. Chidsey, Wm Calvert, C. E. Harris, John Howard, C. W. Dorrance, D. Burns, J. Turner, J. H. Paddleford, D. Jones, C. White, A. Knapp, S. H. St. John, twelve good and lawful men, who being elected, tried, and sworn; whereupon the said plaintiffs take a non-suit. It is therefore considered by the court that the plaintiffs take nothing by their said writ, that the said defendant go hence without a day, and recover his costs.

And afterwards, to wit, on the 28th day of December, in the year of our Lord one thousand eight hundred and forty, being of a term of said court begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

C. S. FOWLER & Co.
vs. } 2422.
JOHN TICKNOR.

Judgment.

This day came the parties by their attorneys; whereupon also came the following jury, to wit: S. G. Swift, S. Travis, John Wylie, C. Rain, J. W. Hunt, A. Demony, C. Smith, C. Junelot, H. Monroe, J. S. Gliddon, J. R. Elliott, T. G. Newbold, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs, and assess their damages at forty-nine hundred and ninety-one dollars. It is therefore considered by the court that the said Sylvester L. Fowler, Charles S. Fowler, and William Truitt, plaintiffs, do recover against the said John Ticknor, defendant, the said sum of forty-nine hundred and ninety-one dollars, the damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Whereupon afterwards, to wit, on the 16th day of January, in the year of our Lord one thousand eight hundred and forty-one, the following writ of fieri facias was issued from the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA.

Circuit court of the United States, for the ninth judicial circuit, southern district of Alabama.

Execution.

The President of the United States, to the marshal of any district of the State of Alabama, greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements, of John Ticknor, late in said district, you cause to be made the sum of forty-nine hundred and ninety-one dollars, with interest thereon from the 28th day of December, A. D. 1840, which Sylvester L Fowler, Charles S. Fowler, and William Prout, at a term of said circuit court, begun and held on the fourth Monday of November, 1840, have recovered against him for damages. Also the sum of forty-two $\frac{36}{100}$ dollars, which to the said Sylvester L. et als., in the same court, were adjudged for costs and charges in that behalf expended, whereof the said John is convicted, as appears of record. And that you have the said sums of money before the said circuit court, on the second Monday of March next, at the place of holding said court, at Mobile, to render to the said Sylvester et als., of the damages and costs aforesaid. And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty.

Issued the 16th day of January, in the year of our Lord one thousand eight hundred and forty-one.

Attest, DAVID FILES,
Clerk C. C. so. dis. Alabama.

Marshal's return.—Marshal's return.

Received 16th January, 1841. Ordered by plaintiffs' attorneys to make no levy until further orders.

R. L. CRAWFORD, *Marshal.*
By C. CUYLER, *D. M.*

And afterwards, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and forty-one, the following alias writ of fieri facias was issued from the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA.

Circuit court of the United States, for the ninth judicial circuit, southern district of Alabama.

Alias execution.

The President of the United States, to the marshal of any district of the State of Alabama, greeting:

You are hereby commanded as before, that of the goods and chattels, lands and tenements, of John Ticknor, late in said district, you cause to be made the sum of forty-nine hundred and ninety-one dollars, with interest thereon from the 28th day of December, A. D. 1840, which Sylvester L. Fowler, Charles Fowler, and William Prout, at a term of said circuit court, begun and held on the fourth Monday of November, eighteen hundred and forty, have recovered against him for damages. Also the sum of fifty $\frac{96}{100}$ dollars, which to the said Sylvester L. et als., in the same court, were adjudged for costs and charges in that behalf expended; whereof the said John is convicted, as appears of record; and that you have the said sums of money before the said circuit court, on the fourth Monday of November next, at the place of holding said court, at Mobile, to render to the said Sylvester L. of the damages and costs aforesaid. And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of March, in the year of our Lord one thousand eight hundred and forty-one.

Issued the 2d day of April, in the year of our Lord one thousand eight hundred and forty-one.

Marshal's return.—Marshal's return.

Received 2d April, 1841. No property found.

R. L. CRAWFORD, *Marshal.*
By C. CUYLER, *M. D.*

And afterwards, to wit, on the 7th day of April, in the year of our Lord one thousand eight hundred and forty-five, the following pluries writ of fieri facias was issued from the office of the clerk of said court, to wit:

Pluries execution.

United States of America, circuit court of the United States, for the ninth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of any district in the State of Alabama, greeting:

You are hereby commanded as before, that of the goods and chattels, lands and tenements, of John Ticknor, late in said district, you cause to be made the sum of forty-nine hundred and ninety-one dollars, with interest thereon from the 28th day of December, A. D. 1840, which Sylvester L. Fowler, Charles Fowler, and William Prout, at a term of

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said circuit court, begun and held on the fourth Monday of November, 1840, have recovered against him for damages; also the sum of fifty-seven $\frac{11}{100}$ dollars, which to the said Sylvester L. et al., in the same court, were adjudged for costs and charges in that behalf expended, whereof the said John is convicted, as appears of record; and that you have the said sum of money before the said circuit court on the third Monday of April instant, at the place of holding said court at Mobile, to render to the said Sylvester L. et al., of the damages and costs aforesaid, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-four.

Issued the 7th day of April, 1845.

Attest: JOHN FITTS,
Cl'k C. C., So. dist. Ala.

Marshal's return—Marshal's return.

Rec'd in office April 7th, 1845; levied, Mobile, April 7th, 1845, on the following property: Lot and store situated in the city of Mobile, fronting on the north side of St. Francis street, between Water and Commerce streets, and extending through to Planters' street, having 35 feet on St. Francis street, and running through to Planters' street the same width; bounded south by St. Francis street, east by a lot and store, late property of M. D. Eslava and P. A. Remsen, north by Planters' street, [and] west by a lot late belonging to Alfred Bell, now the property of Beach, Ela & Co.; the same levied on as the property of John Ticknor.

WM. ARMISTEAD, *U. S. marshal*,
By C. CUYLER, *D. marshal.*

Levied this execution, per statement, on the fi. fa. too late to sell.

WM. ARMISTEAD, *U. S. M.*,
By C. CUYLER, *D. M.*

At afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and forty-five, the following writ of venditioni exponas was issued from the office of the clerk of said court, to wit:

Venditioni exponas.

United States of America, circuit court of the United States, for the fifth judicial circuit and southern division of Alabama.

Whereas heretofore, to wit, at a term of the circuit court of the United States, for the fifth judicial circuit and southern division of Alabama, begun and held in and for said circuit, on the fourth Monday of November, A. D. 1840, Sylvester L. Fowler, Charles Fowler, and William Prout, by the judgment and consideration of said court recovered the sum of forty-nine hundred and ninety-one dollars, besides interest and costs;

And whereas, afterwards, to wit, on the 7th day of April, A. D. 1845, a pluries writ of fieri facias was issued upon the aforesaid judgment, whereby the marshal of the district was commanded that of the goods and chattels, lands and tenements, of John Ticknor he should cause to be made the sum of forty-nine hundred and ninety-one dollars, with interest thereon from the twenty-eighth day of December, A. D. 1840, which the said Sylvester L. Fowler, Charles Fowler, and William Prout, recovered against him as aforesaid for damages; also the further sum of fifty-seven $\frac{11}{100}$ dollars, their costs; upon which said pluries fi. fa., the marshal made the following return, to wit:

"Levied, Mobile, April 7th, 1845, on the property, lot and store situated in the city of Mobile, fronting on the north side of St. Francis street, between water and Commerce streets, and extending through to Planters' street, having 35 feet front on St. Francis, and running through to Planters' street the same width; bounded south by St. Francis street, east by a lot and store, late property of M. D. Eslava and P. A. Remsen, north by Planters' street, [and] west by a lot late belonging to Alfred Bell, now the property of Beach, Ela & Co.; the same levied on as the property of John Ticknor."

Now, therefore, you, Wm. Armistead, marshal as under the authority of the President of the United States and of the court aforesaid, are hereby commanded that, after giving due and legal notice of the time and place, you do expose for sale at public auction the aforesaid lands so levied on as aforesaid, and the same sell for cash to the highest bidder, and that out of the proceeds of such sale you do satisfy to the [said] Sylvester L. Fowler, Charles S. Fowler, and William Prout, the said damages and costs so recovered as aforesaid against the said John Ticknor, and what you do in the premises make known to the judges of our said court, on the fourth Monday of December next, at Mobile, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of the said circuit court, this third Monday of April, in the year of our Lord one thousand eight hundred and forty-five.

Issued the first day of May, one thousand eight hundred and forty-five.

Attest: JOHN FITTS, *Clerk.*

Marshal's return.—Marshal's return.

Received in office 3d May, 1845; sold the property described in the within venditioni exponas on the first Monday of July, 1845, to Edward S. Dargan, for the sum of seven thousand five hundred dollars, at U. S. marshal's sale.

WM. ARMISTEAD, *U. S. M.*
By C. CUYLER, *D. M.*

I, John Fitts, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and before going eleven pages and seven lines contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined therein, wherein Sylvester L. Fowler, Charles Fowler, and William Prout, are plaintiffs, and John Ticknor was defendant, as the same remains on file and of record in said court.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of said court, this 9th [L. S.] day of December, in the year of our Lord one thousand eight hundred and forty-five.

JOHN FITTS,
Clerk C. C. southern district Ala.

Filed December 9th, 1845.

M. J. McRAE, *Reg'r.*

Transcript from U. S. court, No. 2.—Transcript from U. S. court, No. 2.

Pleas had before the honorable the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, at a term of said court begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty.

Present, his honor John McKinley, presiding judge, and his honor William Crawford, judge of said court.

Writ.

Be it remembered, that heretofore, to wit, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, Thomas Crouch, Richard Crouch, and Jesse Snead, sued out of said court their writ of capias ad respondendum against John Ticknor, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Circuit court of the U. S. for the ninth
judicial circuit, and southern dist. of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of John Ticknor, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the fourth Monday of November instant, to answer unto Thomas Crouch, Richard Crouch, and Jesse Snead, (survivors of John Crouch,) who are partners, using the style of Crouch and Snead, and who are citizens of the State of Virginia, in a plea of trespass on the case in assumpsit, to their damage ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Issued the 13th day of November, in the year of our Lord one thousand eight hundred and thirty-nine.

Attest:
DAVID FILES,
Clerk C. C. southern district Alabama.

Cause of action.—Cause of action.

Exchange for $3,600. Mobile, *December* 20, 1836.

Twenty-one months after date of this first of exchange, (second unpaid,) pay Gayle & Bower, or order, fifty-six hundred dollars, value received, and charge the same to account.

JOSEPH. G. LINDSAY.

To Messrs. Goodman, Miller & Co., *Mobile.*

Endorsed on the back.
GAYLE & BOWER,
JOHN TICKNOR,
ARCHIE BROWN,
JOHN W. LINDSAY.

This action is founded on the bill of exchange, of which the foregoing is a copy, in substance.

CUTHBERT & STANLEY,
Attorneys for plaintiffs.

Received and executed 19th November, 1839.

R. L. CRAWFORD, *U. S. M.*
By C. CUYLER, *D. M.*

Marshal's return.

And afterwards, to wit, at a term of said court, begun and held in and for said district on the fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs filed in said court the following declaration, to wit:

Declaration.

United States of America,
Ninth judicial circuit, southern district of Alabama.

Thomas Crouch, Richard Crouch, and Jesse Snead, who are citizens of the State of Virginia, merchants, trading under the style of Crouches & Snead, plaintiffs, by attorneys complain of John Ticknor, who is a citizen of the State of Alabama, defendant, in custody, &c., on a plea of trespass on the case on promises. For that, whereas Joseph G. Lindsay, heretofore, to wit, on the twentieth day of December, in the year 1836, made his certain bill of exchange in writing, having date at Mobile, the day and year aforesaid, and then and there directed the said bill of exchange to Messrs. Goodman, Miller & Co., and thereby

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then and there requested the said Goodman, Miller & Co., twenty-one months after date thereof, first of exchange, (second unpaid,) to pay to Gayle & Bower, or order, fifty-six hundred dollars, for value received, and to charge the same to the account of the said Joseph G. Lindsay, and then and there delivered the said bill of exchange to the said Gayle & Bower; which said bill of exchange the said Goodman, Miller & Co. afterwards, to wit, on the day and year aforesaid, upon sight thereof, accepted. And the said Gayle & Bower then and there endorsed and delivered the said bill of exchange to John Ticknor, who then and there endorsed and delivered the said bill of exchange to the plaintiffs; and afterwards, when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on the twenty-second day of September, in the year eighteen hundred and thirty-eight, the said bill of exchange was presented to the said Goodman, Miller & Co. for payment thereof; and the said Goodman, Miller & Co. had notice of the said endorsements thereon; but the said Goodman, Miller & Co. did not, nor would at said time of presentment, or at any time before or after, pay the said sum of money in said bill of exchange specified, or any part thereof, but wholly neglected and refused so to do; nor did they pay the said second of exchange in said bill of exchange mentioned, but therein wholly failed and made default. And thereupon, afterwards, to wit, on the day and year last aforesaid, the said bill of exchange was duly protested for non-payment thereof; of all which the said defendant afterwards, to wit, on the day and year last aforesaid, had due notice; by means whereof the said defendant then and there became liable to pay to said plaintiffs the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested. And being so liable the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, undertook and promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified, when thereunto afterwards requested. Nevertheless the said defendant, not regarding his said promise and undertaking, has not paid the said sum of money, or any part thereof, to the said plaintiffs, although often requested so to do, but the same to pay has hitherto wholly neglected and refused, to the damage of the said plaintiffs twelve thousand dollars; wherefore they bring suit.

CUTHBERT & STANLEY,
Attorneys for plaintiffs.

And afterwards, to wit, at the same term of said court, the said defendant filed [in] said court the following demurrer, to wit:

Demurrer.

Demurrer in short by consent.

GIBBONS & FISHER,
Att'ys for defendant.

And afterwards, to wit, on the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty, being a day of a term of said court, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

Order of Dismissal.

Crouch & Snead
vs.
John Ticknor.
2460.

This day came the plaintiffs, by their attorneys, and dismissed their said suit.

And afterwards, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and forty, being a day of [a] term of said court, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

Order setting aside order of dismissal and giving leave to amend.

Crouch & Snead
vs.
John Ticknor.

On motion of plaintiffs, it is ordered by the court, that the order of dismissing this suit made during this term be set aside, that said cause be reinstated on the docket. It is further ordered, that said plaintiffs have leave to amend their declaration to plead any plea the[y] could have pleaded at the return term.

And afterwards, to wit, on the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty, being a day of a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

Crouch & Snead
vs.
John Ticknor.
2460.

This day came the parties, by their attorneys, whereupon also came the following jury, to wit, C. Gascoigne, J. Cain, D. Quigley, C. Cullum, J. Jayne, A. Smith, J. W. Moore, G. Davis, jr., R. B. Owen, G. S. Martin, M. A. Ward, J. W. Dabney, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs, and assess their damages at seven thousand one hundred and seventy-six $\frac{25}{100}$ dollars.

Judgment.

It is therefore considered by the court, that the said Thomas Crouch, Richard Crouch, and Jesse Snead, plaintiffs, recover against the said

John Ticknor, defendant, the said sum of seventy-one hundred and seventy-six $\frac{25}{100}$ dollars, the damages aforesaid in manner aforesaid by the jurors aforesaid assessed, together with their costs in this behalf expended.

Whereupon, afterwards, to wit, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and forty-one, the following writ of fieri facias was issued from the office of the clerk of said court, to wit:

Execution.

United States of America, circuit court of the United States for the ninth judicial circuit, southern district of Alabama.

The President of the United States, to the marshal of any district of the State of Alabama, greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements, of John Ticknor, late in said district, you cause to be made the sum of seventy-one hundred and seventy-six $\frac{25}{100}$ dollars, with interest thereon from the 31st day of December, A. D. 1840, which Thomas Crouch, Richard Crouch, and Jesse Snead, at a term of said circuit court begun and held on the fourth Monday of November, 1840, have recovered against him for damages; also the sum of thirty-seven $\frac{52}{100}$ dollars, which to the said Thomas et als., in the said court were adjudged for costs and charges in that behalf expended, whereof the said John is convicted, as appears of record; and that you have the said sums of money before the said circuit court, on the second Monday of March next, at the place of holding said court, at Mobile, to render to the said Thomas et als. of the damages and costs aforesaid. And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty.

Issued the 16th day of January, in the year of our Lord one thousand eight hundred and forty-one.

Attest: DAVID FILES,
Clerk C. C. so. dis. Ala.

Marshal's return. Marshal's return.

Received 16th January, 1841. No property found.
R. L. CRAWFORD, *Marshal,*
By C. CUYLER, *D. M.*

And afterwards, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and forty-five, the following alias writ of fieri facias was issued from the office of the clerk of said court, to wit:

Alias Fi. fa.

UNITED STATES OF AMERICA.

United States circuit court for the ninth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of any district in the State of Alabama, greeting:

You are hereby commanded as before, that of the goods and chattels, lands and tenements, of John Ticknor, late in said district, you cause to be made the sum of seventy-one hundred and seventy-six $\frac{25}{100}$ dollars, with interest thereon from the 31st day of December, A. D. 1840, which Thomas Crouch, Richard Crouch, and Jesse Snead, at a term of said circuit court, begun and held on the fourth Monday of November, 1840, have recovered against him for damages; also the sum of forty-two $\frac{77}{100}$ dollars, which to the said Thomas et al., in the same court, were adjudged for costs and charges in that behalf expended, whereof the said John is convicted, as appears of record; and that you have the said sum of money before the said circuit court on the third Monday of April next, at the place of holding said court at Mobile, to render to the said Thomas et al. of the damages and costs aforesaid; and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-four.

Issued the twenty-fourth day of February, 1845.

Attest: JOHN FITTS,
Clerk C. C. southern dist. Alabama.

Marshal's return.

Received 24th February, 1845. Levied Mobile, February 25th, 1845, on the following property: lot and store situated in the city of Mobile, fronting on the north side of St. Francis street, and running through to Planters' street the same width; bounded south by St. Francis street, east by a lot and store, late property of M. D. Eslava and P. A. Remsen, north by Planters' street, west by a lot late belonging to Alfred Bell, now the property of Beach, Ela & Co., the same levied on as the property of John Ticknor. The sale of the property postponed by Judge E. S. Dargan until further order.

WM. ARMISTEAD, *U. S. Marshal.*
By C. CUYLER, *D. M.*

And afterwards, to wit, on the 17th day of May, in the year of our Lord one thousand eight hundred and forty-five, the following pluries writ of fieri facias was issued from the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA.

Circuit court of the United States, for fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of any district of Alabama, greeting:

Pluries Fi fa.

You are hereby commanded as before, that of the goods and chattels, lands and tenements, of John Ticknor, late of said district, you cause to be made the sum of seventy-one hundred and seventy-six $\frac{25}{100}$ dollars, with interest thereon from the 31st day of December, A. D. 1840; which Thomas Crouch, Richard Crouch, and Jesse Snead, at a term of said circuit court begun and held on the fourth Monday of November, 1840, have recovered against him for damages; also the sum of eighty $\frac{12}{100}$ dollars, which to the said Thomas et al., in the same circuit court, were adjudged for costs and charges in that behalf expended, whereof the said John is convicted, as appears of record; and that you have the said sums of moneys before the said circuit court, on the fourth Monday of December next, at the place of holding said court at Mobile, to render to the said Thomas et al., of the damages and costs aforesaid; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the third Monday of April, in the year of our Lord one thousand eight hundred and forty-five.

Issued 17th day of May, 1845.

Attest: JOHN FITTS,
Clerk C. C. southern dist. Alabama.

Marshal's return.

Levied on the following property, to wit, lot and brick store situated in the city of Mobile, fronting on the north side of St. Francis street, between Water and Commerce streets, and extending through to Planters' street, having 35 feet front on St. Francis street, and running through to Planters' street the same width; bounded south by St. Francis street, east by a lot and store late the property of M. D. Eslava and P. A. Remsen, north by Planters' street, and west by a lot late belonging to Alfred Bell, now the property of Beach, Ela & Co., was levied on as the property of John Ticknor, to satisfy this fi. fa. Sold the first Monday of July, 1845, the above described property to Edward S. Dargan, for the sum of seven thousand five hundred dollars, he being the highest bidder for the same.

WM. ARMISTEAD, *U. S. Marshal.*
By C. CUYLER, *D. M.*

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and beforegoing ten pages and seven lines contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending therein, wherein Thomas Crouch, Richard Crouch, and Jesse Snead, were plaintiffs, and John Ticknor was defendant, as the same remains on file and of record in said court.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand and affixed the seal of said court this ninth day of December, in the year of our Lord one thousand eight hundred and forty-five.

JOHN FITTS,
Clerk C. C. southern dist. Alabama.

Marshal's deed to Dargan.—Marshal's deed to Dargan.

Be it remembered, that on the 28th December, 1840, Sylvester L. Fowler, Charles Fowler, and William Prout, recovered a judgment against John Ticknor for the sum of four thousand nine hundred and ninety-one dollars damages, and the further sum of sixty-two $\frac{36}{100}$ dollars costs of suit; and that on the 1st day of May, 1845, a writ of venditioni exponas issued from the circuit court of the United States for the southern district of Alabama, directed to the marshal of said district, that of the goods and chattels, lands and tenements, of the said John Ticknor, be caused to be made the sum of four thousand nine hundred and ninety-one dollars for their damages, with interest from the 28th day of December, 1840, and the further sum of sixty-two $\frac{36}{100}$ dollars costs of suit; also, on the 31st day of December, 1840, Thomas Crouch, Richard Crouch, and Jessee Snead recovered a judgment against John Ticknor for the sum of seven thousand one hundred and seventy-six $\frac{23}{100}$ dollars damages, and the further sum of eighty $\frac{62}{100}$ dollars costs of suit, and that on the 17th day of May, 1845, a writ of fieri facias issued from the circuit court of the United States, for the southern district of Alabama, directed to the marshal of said district of Alabama, that of the goods and chattels, lands and tenements, of the said John Ticknor, be caused to be made the sum of seven thousand one hundred and seventy-six $\frac{27}{100}$ dollars for their damages, with interest from the 31st day of December, 1840, and the further sum of eighty $\frac{02}{100}$ dollars costs of suit; therefore, I, William Armistead, marshal of the aforesaid district, by virtue of the aforesaid writs of venditioni exponas and fieri facias, did levy on the following described property, situated and lying in the city of Mobile, State of Alabama, to wit, lot and store fronting on the north side of St. Francis street between Water and Commerce streets, and extending through to Planters' street, having 35 feet front on St. Francis street and running through to Planters' street the same width, bounded south by St. Francis street, east by lot and store late the property of M. D. Eslava and P. A. Remsen, north by Planters' street, and west by a lot lately belonging to Alfred Bell, now the property of Beach, Ela & Co., as the property of the aforesaid John Ticknor, and after giving legal notice of the time and place of sale, did, on Monday, the 7th day of July, 1845, expose the aforesaid property at public sale, and Edward S. Dargan having bid the sum of seven thousand five hundred dollars for the same, the said above described property was cried off to him, the said Edward S. Dargan, he being the highest bidder for the same.

Now, therefore, I, William Armistead, marshal as aforesaid, for and in consideration of the sum of seven thousand five hundred dollars, cash in hand paid by the said Edward S. Dargan, do sell and convey to him, the said Edward S. Dargan, all the right, title, interest, or claim, that the said John Ticknor has or had at the rendition of the described judgment, as witness my hand and seal this 13th day of August, 1845.

WM. ARMISTEAD, [SEAL.]
Marshal of the So. Dist. Ala.
By C. CUYLER,
Deputy Marshal.

In presence of—E. RUST.

STATE OF ALABAMA,
Mobile county, ss.

Be it remembered that the above named C. Cuyler, deputy marshal, appeared personally before me, Edwin Rust, notary public in and for said county, duly commissioned and sworn, and acknowledged that he signed, sealed, and delivered the above deed to Edward S. Dargan, for and in behalf, and as the act and deed, of the above named William Armistead, marshal of the southern district of Alabama, and on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this 13th day of August, A. D. 1845.

EDWIN RUST, [SEAL.]
Not. Pub.

Decree.—Decree.

At a term of the court of chancery for the first district of the southern chancery division of the State of Alabama, begun and holden at Mobile, on the first Monday of December, A. D. 1845, the honorable Anderson Crenshaw, chancellor, presiding, the following orders and decree were made and entered in this cause, to wit, on the tenth day of December, A. D. 1845, the same being a day of said term, the following decree was rendered in this cause, to wit:

EDWARD S. DARGAN
vs.
WARING, receiver, et al.

In this case it appears that the defendant, Joseph Wiswall, heretofore filed his bill against the defendant Ticknor and one Day, and that a decree was rendered therein, by which a deed, made by Ticknor to Day, conveying to him certain real estate and personal property, was set aside as being fraudulent and void, as against said Wiswall, who was a judgment creditor, and under said decree the defendant Moses Waring was appointed receiver and let into possession of said estate.

The petitioner represents, that in December, 1840, before Wiswall obtained his judgment, and before the bill was filed, but after the execution of the deed from Ticknor to Day, certain judgments were obtained against Ticknor, and executions were duly issued, and on the 17th day of May last, were levied on said real estate in the hands of the receiver, and on the 7th of July last said real estate was sold by the marshal and the petitioner became the purchaser. The prayer of the petitioner is, that the real estate be withdrawn from the receiver, and be placed in the possession of the petitioner, on the ground that the judgments under which he claims are prior to Wiswall's judgment.

Without stopping to inquire whether the proper mode of bringing the matter before the court is by bill or by petition, I proceed to the consideration of its merits.

In behalf of the petition, it is insisted that as the judgments under which the petitioner claims are older than the judgment in favor of Wiswall, they have a prior lien, and that this lien cannot be defeated by Wiswall's filing a bill and obtaining a decree against the property fraudulently conveyed by Ticknor to Day, because the property was subject to execution under the older judgments; that the filing a bill gains the preference only in regard to equitable interests and choses in action which cannot be reached by an execution at law. And that the distinction is between assets which are legal and those which are equitable; and that it is in the latter case that the court of chancery yields a preference to the most vigilant.

On the other hand, it is contended that [if] the distinction exists in New York, it is in virtue of a statute; and that with us the law is, that the creditor who first files his bill shall be preferred, whether the object of the bill is to subject the equitable assets and choses in action of the debtor to the payment of the debt, or whether it seeks to reach his property which has been fraudulently conveyed.

I hold that, if the property cannot be reached by an execution at law, and it is necessary for the party to come into this court to make it available among judgment creditors, he who first files his bill shall be preferred. That the creditor whose diligence has pursued the property into this court, is entitled to a preference as the reward of his vigilance. And in the language of the chancellor of New York, if a creditor whose execution is first returned unsatisfied pursues the race of legal diligence by the commencement of a suit in chancery, he will obtain the reward of his vigilance; but if he abandons the pursuit, or lingers on the way before he has obtained a specific lien, he has no right to complain if another creditor obtains a preference by *by* superior vigilance.

But if this rule applies only to the equitable assets of the debtor, and not to property which he has fraudulently conveyed away, and if, notwithstanding the fraudulent conveyance, the judgment under which the petitioner claims acquired a prior lien on the land, yet I apprehend the land could not be sold under an execution at law until the conveyance was set aside, much less could it be sold after the decree of this court setting aside the conveyance and appointing a receiver and putting him in possession of the property. And if the property was sold by the marshal under these circumstances, I think it evident that the petitioner acquired no title by his purchase, and that the sale was a nullity. If these judgment creditors have a prior lien, and were entitled to the preference by a proper application, they should present their claims to this court, and the court would direct the funds arising from the sale of the property in the hands of the receiver to be applied as the priorities of the respective creditors might be settled. From this view of the case, I feel constrained to refuse the prayer of the petitioner. And it is ordered that the petition be dismissed with costs.

Signed, CRENSHAW, *Chancellor.*

Order overruling motion for leave to bring action of ejectment, and allowing an appeal.

And on the 10th day of December, A. D. 1845, being the same day of said term, it was ordered as follows in this cause, to wit:

EDWARD S. DARGAN
vs.
MOSES WARING, rec'r, et al.

In this cause, on a hearing, the court having dismissed the petition, the petitioner moved the court for leave to bring an action of ejectment against the receiver; which motion is overruled. And from the decision of the court in dismissing the petition and overruling this motion, the petitioner prays an appeal to the supreme court, which appeal is granted on petitioner giving bond and security in the sum of three hundred dollars, conditioned to pay and satisfy such costs and damages as may be sustained by reason of said appeal.

Continuance.

At a term of the court of chancery at Mobile aforesaid, begun and held on the first Monday of April, A. D. 1846, and on the 6th day of April, A. D. 1846, the same being a day of said term, his honor, Anderson Crenshaw, chancellor, presiding, the following order was made in this cause, to wit:

EDWARD S. DARGAN, complainant,
vs.
WARING, receiver, et al., defendants.

This cause is continued pending in the supreme court; and at a term of the court of chancery at Mobile aforesaid, begun and held on the second Monday of December, A. D. 1846, on Monday, 14th day of December, A. D. 1846, the same being a day of said term, the honorable Anderson Crenshaw, chancellor, presiding, the following order was made in this cause, to wit:

EDWARD S. DARGAN, complainant, }
vs. }
WARING, receiver, et al., defend'ts. }

This cause is continued pending in the supreme court.

Appeal bond.—Appeal bond.

THE STATE OF ALABAMA, *Mobile county*.

Know all men by these presents, that we, Edward S. Dargan and Wait S. Hoyt, are held and firmly bound unto Moses Waring, John Ticknor, and Joseph Wiswall, in the sum of three hundred dollars; for the faithful payment of which, well and truly to be made, we bind ourselves and each of us, and our heirs, firmly, by these presents. Sealed with our seals, and dated this 17th December, 1845.

The condition of this obligation is such, that whereas E. S. Dargan has prayed for and obtained an appeal from the decree of our chancery court, for the first district, southern division, at Mobile, rendered at December term, 1845, wherein said Dargan was plaintiff, and Waring and others were defendants, to the January term, 1846, of the supreme court of the State of Alabama. Now, therefore, if said Dargan shall prosecute to effect his said appeal, and pay and satisfy all costs and damages that may be sustained by the wrongful sueing out of the same, then this obligation shall be void, otherwise be and remain in full force, virtue, and effect.

E. S. DARGAN, [SEAL.]
By W. S. HOYT.
W. S. HOYT. [SEAL.]

In presence of—M. J. MCRAE.

Filed December 17th, 1845. M. J. MCRAE, *Reg'r*.

Citation.—Citation.

THE STATE OF ALABAMA.

Court of chancery, for the first district of the southern chancery division of said State, at Mobile.

To the sheriff of Mobile county, greeting:

Whereas, at a term of the court of chancery aforesaid, held on the first Monday of Dec'r, 1845, in a certain cause in said court wherein Edward S. Dargan is complainant, and Moses Waring, receiver, John Ticknor, and Joseph Wiswall are defendants, a decree was rendered against said complainant, to reverse which he, the said complainant, has applied for and obtained from this office a writ of appeal, returnable to the next term of our supreme court of the State of Alabama, to be held at Tuscaloosa, on the first Monday of January next. Now, you are hereby commanded, and without delay, to cite the said defendants, or Kiah B. Sewall, their solicitor, to appear at the next term of our said supreme court, to defend against the said writ of appeal, if they think proper.

Witness Malcolm J. McRae, register of the said court of chancery, this 17th day of December, 1845.

Attest: M. J. McRAE, *Reg'r,*
1st district, so. ch'y div., at Mobile.

Sheriff's return.—Sheriff's return.

Received 18th December, 1845, and on the 20th December, 1845, I served a copy of the within citation on K. B. Sewall, defendant's attorney. C. BANCROFT, *Sheriff, M. C.*
By M. J. D. BALDWYN, *D'y Sheriff.*

Certificate.—Certificate from supreme court.

The State of Alabama, to the register of the chancery court of Mobile county, greeting:

Whereas, the record and proceedings of said court in a certain action, wherein, by said court, at December term, 1845, it was ordered that the petition of Edward S. Dargan, exhibited against Moses Waring, receiver, Joseph Wiswall and John Ticknor, defendants, be dismissed with costs, &c., were brought before our supreme court by appeal granted by said court, on the 10th day of December, 1845, on behalf of Edward S. Dargan, appellant.

Now, it is hereby certified, that it was thereupon, by our supreme court, on the 15th day of December, 1846, considered that said order of said chancery court be affirmed; and that said defendants in appeal recover against said appellant, and also against Wait S. Hoyt, security for the prosecution of said appeal, the amount of the costs in said cause accruing in said supreme court, and in said court below.

Witness James B. Wallace, clerk of said supreme court, the 15th day of February, 1847.

JAMES B. WALLACE, *Clerk.*

THE STATE OF ALABAMA, *Mobile county.*

I, Malcolm J. McRae, register of the court of chancery, for the first district of the southern chancery division of said State, at Mobile, do hereby certify, that the foregoing fifty pages contain a full, complete, and correct transcript of the record and proceedings had in said court of chancery, in a certain cause therein heretofore pending, wherein Edward S. Dargan was complainant, and Moses Waring, receiver, John Ticknor, and Joseph Wiswall were defendants, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of chancery this 10th day of May, in the year of our Lord eighteen hundred and forty-eight, and of the American independence the seventy-first year.

Attest: M. J. McRAE, *Reg'r.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama. In error.

DAVID SAMPSON, on the several demises of Edward Hall and Edward S. Dargan,
vs
ABEDNEGO DANIELS--Joseph Wiswall, landlord, defendant.

Know all men by these presents that we, Joseph Wiswall and Moses Waring, of Mobile, State of Alabama, are held and firmly bound unto the above named plaintiffs in the sum of five hundred dollars, to be paid to the said plaintiffs, their executors or administrators; to which payment, well and truly to be paid, we bind ourselves and each of us, jointly and severally, and of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated Mobile, January 8th, eighteen hundred and forty-nine.

Whereas the above named Joseph Wiswall has prosecuted a writ of error to the Supreme court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama; now, therefore, the condition of this obligation is such that if the above named Joseph Wiswall shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Signed, sealed, and delivered in presence of—

JOSEPH WISWALL, [SEAL.]
MOSES WARING. [SEAL.]

I approve the above bond. Jan'y 12th, 1849.

WM. CRAWFORD.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said circuit court of the United States, for the southern district of Alabama, before you, between David Sampson, on the several demises of Edward Hall and Edward S. Dargan, and Abednego Daniels, Joseph Wiswall, landlord, defendant, manifest error hath happened to the great damage of the said Joseph Wiswall, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this eighth day of January, eighteen hundred and forty-nine.

JOHN FITTS,
C. C. C. So. dist. Ala.

United States of America,
Southern district of Alabama, ss:

To David Sampson, Edward Hall, and Edward S. Dargan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Monday of December next, 1849, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, wherein Joseph Wiswall is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable William Crawford, one of the judges of the circuit court of the fifth judicial circuit and southern district of Alabama.

WM. CRAWFORD.

Citation.

Filed 13th Jan'y, 1849. JOHN FITTS, *Clerk.*

Received 30th May, 1849, and executed same day by serving a copy of the within upon Daniel Chandler, esq., of the firm of Campbell & Chandler, pl'ff's att'y.

CHARLES BINGHAM, *U. S. marshal.*
By ALEX. EVERETT, *D. M.*

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, hereby certify, that the foregoing is a true and complete transcript of the record and proceedings in a certain cause lately determined in said court, wherein David Sampson, ex demise of Hall & Dargan, was plaintiff, and Abednego Daniels, F. W. McCoy, and William Johnson, tenants, were defendants, as appears from the records of said court now remaining in said clerk's office, together with the writ of error and citation hereto attached.